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ENVIRONMENTAL ASSESSMENT BOARD



ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARINGS

PRELIMINARY HEARING

VOLUME: 5

DATE: Thursday, April 11, 1991


BEFORE:

HON. MR. JUSTICE E. SAUNDERS	CHAIRMAN
DR. G. CONNELL	MEMBER
MS. G. PATTERSON	MEMBER

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ENVIRONMENTAL ASSESSMENT BOARD
ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARING

IN THE MATTER OF the Environmental Assessment Act,
R.S.O. 1980, c. 140, as amended, and Regulations
thereunder;

AND IN THE MATTER OF an undertaking by Ontario Hydro
consisting of a program in respect of activities
associated with meeting future electricity
requirements in Ontario.

PRELIMINARY HEARING
VOLUME 5

Held on the 5th Floor, 2200
Yonge Street, Toronto, Ontario,
on Thursday, the 11th day of April,
1991, commencing at 9:00 a.m.

B E F O R E :

THE HON. MR. JUSTICE E. SAUNDERS	Chairman
DR. G. CONNELL	Member
MS. G. PATTERSON	Member

S T A F F :

MR. M. HARPUR	Counsel
MR. R. NUNN	Counsel/Manager, Informations Systems
MS. G. MORRISON	Executive Coordinator

A P P E A R A N C E S

B. CAMPBELL	)	Ontario Hydro
M. PAYNE)	
B. DUFFY)	
J.C. SHEPHERD	)	IPPSO
I. MONDROW)	
J. PASSMORE	)	SESCI
R. WATSON	)	Municipal Electric
A. YATCHEW	)	Association
S. COUBAN	)	Provincial Government
P. MORAN	)	Agencies
C. MARLATT		North Shore Tribal Council, United Chiefs and Councils of Manitoulin, Union of Ontario Indians
D. POCH	)	Coalition of Environmental
D. ARGUE	)	Groups
T. ROCKINGHAM		Ministry of Energy
B. KELSEY	)	Northwatch
L. GREENSPOON)	
J. RODGER		AMPCO
M. MATTSON		Energy Probe
A. WAFFLE		Environment Canada
R. POWER		City of Toronto, South Bruce Economic Corp.
M. CAMPBELL	)	Ontario Public Health
M. IZZARD	)	Associaton, International Institute of Concern for Public Health

A P P E A R A N C E S
(Cont'd)

C. GATES	)	CAC (Ontario)
J. MONGER)	
B. BODNER		Consumers Gas
J. MONGER		CAC
W. TRIVETT		Ron Hunter
M. KLIPPENSTEIN		Pollution Probe
N. KLEER		NAN Treaty #3, et al
T. HILL		Town of Newcastle
M. OMATSU		OMAA & NAPA
U. FRANKLIN	)	Voice of Women
B. CARR)	
F. MACKESY		On her own behalf

1 ---Upon commencing at 9:07 a.m.

2 MR. HARPUR: Thank you all for coming to
3 this prescoping meeting. As the hearing procedures
4 have indicated, our intent at this meeting is to try to
5 expedite the process once the panel has arrived. I
6 have spoken to Justice Saunders a couple of moments ago
7 and he assures me that we need not feel under any
8 particular time constraints. To the extent that we can
9 be productive in our get-together this morning, he
10 would like us to have lots of time.

11 The meeting that will involve the panel,
12 as you are aware from that procedural directive, is to
13 attempt to generate a final issues list which would
14 serve as the Board's and the parties' definition of
15 relevance, and also, at least in my estimation, as a
16 kind of program of the events that we can all expect to
17 unfold in respect of Panel No. 1.

18 The steps which have preceded our
19 get-together today should perhaps be reviewed briefly,
20 and they are these: The Board has received and has
21 reviewed the statements of concerns and Hydro's
22 statement of proposed issues, or proposed statement of
23 issues.

24 At Mr. Campbell's request, Ms. Morrison,
25 Mr. Nunn and I have met with him and with some of the

1 intervenors' representatives on April 9th. We
2 participated in discussions about Hydro's proposed
3 statement, as well as the scoping process generally.
4 Following that discussion, Ms. Morrison, Mr. Nunn and I
5 drafted the draft issues list, which, as I understand
6 it this morning, has not managed to find its way into
7 the hands of everyone.

8 Are there people here this morning who
9 don't have a copy of the document - oh dear - entitled
10 Draft Issues List? We will get you one now.

11 The document that you are getting now is
12 one that has also been provided to the Panel. They
13 have looked at it and they have no --

14 FROM THE FLOOR: You will have to speak
15 up.

16 ---Off the record discussion.

17 MR. HARPUR: Coming back for a moment to
18 this draft issues list. As I indicated, the document
19 that's been provided to the Panel, the Panel did not
20 participate in its creation, but I have had no
21 discussion with any of the members of the Panel about
22 the format of that document.

23 Our intent in preparing it was not to
24 eliminate or amend issues as they appeared on Mr.
25 Campbell's draft statement, but rather to recast them

1 in what, at least for me, was a more user-friendly
2 manner. I will come back to the draft issues list, but
3 let me go on to what I had in mind for the agenda this
4 morning.

5 Firstly, I spoke to Mr. Campbell late in
6 the day yesterday and we talked about the state of his
7 discussions with various representatives of the
8 parties, as to what had been agreed upon and not agreed
9 upon in Mr. Campbell's statement of issues, as it
10 includes these appended documents, 'Matters to be
11 addressed in later panels'. My understanding is that
12 there is agreement with Mr. Campbell's statement of
13 issues with some exceptions, which I would like to
14 canvass among those people to whom Mr. Campbell has
15 spoken. However, I gather that as of approximately
16 five-thirty, Mr. Campbell had not succeeded in talking
17 to the City of Toronto, the government, Northwatch,
18 CAC, OPHA, North Channel Advocates and South Bruce, and
19 it may be that those people have not yet had an
20 opportunity to air their positions.

21 Bruce?

22 MR. B. CAMPBELL: Michael, I should
23 update you on that, because of people arriving this
24 morning, and by dint of some phone calls yesterday
25 evening, I think I can now say that, with respect to

1 the statement of proposed issues that we distributed,
2 we now have agreement to its use from all parties, with
3 the exception of the North Channel Advocates, whose
4 issue in this matter is that the load forecast is too
5 low. And I believe that there would be no argument or
6 no objection that we would take to that proposition.

7 There is, again, with respect to the City
8 of Toronto, they raised only one concern in a letter to
9 me, which I think has been resolved satisfactorily, and
10 I spoke to you about that concern yesterday. And I
11 think that what they have set out in their letter,
12 certainly to me, is satisfactory.

13 The status at this point in time is that,
14 both with respect to the statement of proposed issues,
15 and with respect to the list that I have prepared of
16 the matters to be dealt with by later panels, I now
17 have understandings with all of the parties that would
18 permit the statement of proposed issues to go ahead,
19 with --

20 MR. HARPUR: Bruce, let me ask you
21 something. I had understood from our discussions that
22 you had intended, after our call, to make a few minor
23 amendments to the wording of the document. I haven't
24 seen an amended version.

25 MR. B. CAMPBELL: No, and actually, that

1 happened because the final changes to it were only
2 settled this morning, so I haven't been able to get it
3 amended and copied, at this point. I expect to be able
4 to provide that later today.

5 Maybe we will just clear up -- there were
6 some areas of uncertainty and there were some changes
7 to the right-hand columns, as to where particular
8 matters would be dealt with, and what would be in
9 aspects in Panel 1 and aspects later. But because
10 those conversations were not completed until late
11 yesterday evening, I haven't had an opportunity yet to
12 get it retyped.

13 MR. HARPUR: I am just thinking from a
14 logistic standpoint, in the event that we are able to
15 bring the Panel in at ten or eleven o'clock, presumably
16 they would like to have before them, for consideration,
17 either the amended draft statement of proposed issues
18 that Hydro has created, or that, together with this
19 draft issues list that Gail, Robin and I have prepared.

20 MR. B. CAMPBELL: Given half an hour, I
21 can do that, but the final changes were really just
22 settled here.

23 I guess, Michael, our interest is that we
24 have put a fair amount of effort into having
25 discussions with people about their statement of

1 concerns, our statement of proposed issues and the list
2 of matters to be dealt with by subsequent panels, and I
3 believe that as between the parties and ourselves,
4 there is a pretty clear understanding that the use of
5 the statement of proposed issues is satisfactory, and
6 settlement on the matters to be dealt with in later
7 panels. And it would, I think, be simpler to use those
8 two documents as the base documents.

9 I don't know, other parties may wish to
10 speak to that, but I thought it was worthwhile bringing
11 you up to date on the status of the discussions of
12 these various lists.

13 MR. HARPUR: Thanks, I appreciate it.

14 David Poch?

15 MR. POCH: Michael, just to inform you,
16 the agreement we thought we had, we in fact do have;
17 other than a little technical -- (Laughter)

18 I can only speak for my clients; we are
19 content with Hydro's list. We are also content with
20 the list that you have developed. I think that the two
21 have different strengths: Hydro's list is perhaps more
22 informative, in terms of the particular slant people
23 want to put on their concerns, or on the debate, if you
24 will. Yours, I think, is set out in a more - if I can
25 say this without insulting my friend - more logical

1 progression; it, in some senses, is broader. I think
2 in some senses, it's better; for example, simply
3 putting in the topic 'How forecasting fits into
4 planning', I think that is a topic that is interwoven
5 in many of our concerns, which didn't appear in the
6 earlier list, so in that sense, it's better.

7 Obviously, the Panel will have its views.
8 I am wondering if there is this -- one list doesn't do
9 anybody injustice, as long as the other one is around.
10 Perhaps we can be a little innovative and just leave
11 them both standing, to that short list of them.

12 MR. HARPUR: I wonder if I might come
13 back to that, the matter of our issues list. I wanted
14 to confirm, though, setting that aside for the moment,
15 that, indeed, Bruce has it right, that people are
16 content with the format of the Hydro statement of
17 proposed issues, as it will be amended a little later
18 this morning.

19 I am assuming in asking this question
20 that all people have seen Hydro's draft statement and
21 had a chance to speak to Bruce about it or to call him
22 prior to today's get-together?

23 Jay, you wanted to speak to that, this
24 issue of whether or not Bruce's list is satisfactory?

25 MR. SHEPHERD: Bruce's list is

1 satisfactory to us. We spent a lot of time talking to
2 him, getting the interpretation right, ensuring that
3 the future application and the statements of concerns
4 read, in some considerable detail. And it would seem
5 to us that, given the amount of time that the parties
6 have spent over the last couple of weeks to come to
7 what is, frankly, amazing to me, a consensus of
8 everybody on the list of issues, that we shouldn't try
9 to screw it up by changing it. We may never see
10 consensus like this again.

11 MR. HARPUR: Far be it for me to step in
12 the way. I am delighted that there is such consensus;
13 it may shorten the procedure considerably today.

14 MR. RODGER: If I could add another point
15 to assist Mr. Campbell.

16 Just to start with, AMPCO also is in
17 support of Hydro's list. And the North Channel
18 Advocates have been working with AMPCO on a number of
19 grounds. We can tell Mr. Campbell that the North
20 Channel Advocates also believe that their issue fits
21 within the proposed statement of issues that Mr.
22 Campbell drafted.

23 MR. HARPUR: You are speaking, then, for
24 North Channel this morning?

25 MR. RODGER: As well as AMPCO.

1 MR. HARPUR: Mrs. Mackesy.

2 MRS. MACKESY: I am in agreement with the
3 list that Hydro has presented, on the condition that
4 this doesn't imply that people who agree to that list
5 are automatically in agreement to any issues that
6 aren't on the list as being beyond dispute, supposing
7 some issue should come up at some time. I don't know
8 whether that's relevant at this point.

9 I can't state, myself, that I am
10 absolutely certain that that's all of the issues that
11 could apply to that topic.

12 MR. HARPUR: No. Undoubtedly, as the
13 exigencies of the matter unfold, there will be issues
14 that arise that people will want to ask questions
15 about, that may not be on this list. Whether it
16 happens in this panel or future panels, I don't know,
17 but it's bound to happen. And I have no reason to
18 believe the Panel wouldn't respond as expected, to that
19 kind of request that this question be answered. I am
20 sure they would look at that favorably.

21 However, having said that, let me
22 emphasize that the purpose of the generation of this
23 issues list, whether it be in Bruce's format or the
24 format that we have come up with, is intended to set
25 the scope generally for these questions. There would

1 be no point to the exercise in the event that we are
2 still going to argue general questions of relevance at
3 a future date when the cross-examinations are taking
4 place.

5 MRS. MACKESY: What, my position is that,
6 good be to parties who aren't here right now, who are
7 still parties or participants to the hearing, and may
8 have issues that aren't on these lists?

9 MR. HARPUR: I am operating on the
10 assumption that parties who want to ask questions in
11 cross-examination have submitted statements of
12 concerns, and have dealt with the matter of the issues
13 raised in their statements of concerns with Mr.
14 Campbell based upon what he has said.

15 MRS. MACKESY: What relation does that
16 have to the -- I don't think there are going to be
17 other local meetings. To people who come forward at
18 that time, are they then limited to the issues that
19 have been raised here?

20 MR. HARPUR: Yes.

21 MRS. MACKESY: Oh, I very much -- how do
22 they know?

23 MR. HARPUR: All of those people were
24 provided with the same notice of this meeting that you
25 received. There has to be some system for narrowing

1 down the issues.

2 MRS. MACKESY: I suppose I am in basic
3 disagreement on that, because leaders of the general
4 public don't have the time to be involved in this, and
5 yet they may have very real concerns with this
6 proposal. And they are being limited now as to what
7 they can say in response to the proposal?

8 MR. HARPUR: They aren't being limited,
9 but they have had an opportunity, if they are parties,
10 to express their views and to be here today and
11 tomorrow, if need to be, in order to convince the Panel
12 that an area of cross-examination is appropriate.
13 People who are members of the public who are simply
14 participants wouldn't require that opportunity.

15 MRS. MACKESY: I suspect there are some
16 part-time parties who aren't aware of this, and might
17 disagree with it, and who are getting terribly
18 exasperated by all the procedures they have to be to go
19 through in order to participate, particularly in view
20 of the fact that they may be directly affected at a
21 later date by the decisions coming out of this hearing.

22 Should I be addressing this to the Board
23 later on?

24 MR. HARPUR: I am afraid it's not a
25 criticism or complaint that I can resolve, so perhaps

1 that would be best, if you would indicate to the Board
2 that you feel that there are a number of parties out
3 there who have not responded in some way to this notice
4 of this scoping session and, accordingly, may be
5 prejudiced by its taking place.

6 MRS. MACKESY: I don't know that there
7 are or not, but I remember talking with people after
8 Christmas, who essentially just threw up her hands and
9 walked away from it, because of the difficulties and
10 complications of working with this process. Anyway, at
11 this point, we are just talking about Hydro's list and
12 not, too, the draft issues list; I can speak to that
13 later.

14 MR. HARPUR: Yes, that's correct.

15 MRS. MACKESY: Thank you.

16 MR. GREENSPOON: If I could say
17 something, I think that raises an interesting issue
18 about satellite hearings, and that is that this whole
19 scoping and panel by panel, it seems to me, is going to
20 foreclose the Board from hearing any general issues
21 from the public at a satellite hearing that doesn't fit
22 into the right panel.

23 Well, maybe Mr. Campbell has got the
24 answer to that?

25 MR. HARPUR: I don't think that is

1 anybody's intent.

2 MR. B. CAMPBELL: I think the history of
3 the various panels of the Environmental Assessment
4 Board in its proceedings is that, when satellite
5 hearings are held, when members of the public are
6 making their submissions, that they are dealt with,
7 most often, in quite a different way. And I certainly
8 don't take the position that this scoping exercise that
9 applies to my calling of my Panel 1 evidence and the
10 cross-examination thereon is, in any way, automatically
11 transferrable to what people can talk about when they
12 speak as members of the public addressing the satellite
13 hearings. You won't hear that position taken by
14 Ontario Hydro.

15 MR. HARPUR: I have been reminded that,
16 given the fact that we have a court reporter here, it
17 would be appropriate if everyone identified himself or
18 herself when stepping to the microphone.

19 MR. GREENSPOON: One point that I wanted
20 to make was, although I am in agreement that Mr.
21 Campbell and I have resolved our issues last evening,
22 my understanding still is that the statement of
23 concerns doesn't come to an end upon the filing of the
24 issues list.

25 MR. HARPUR: I intend to deal with that.

1 MR. POCH: Sorry to have to rise again.

2 I think that it is important that the
3 exclusion list, if you will, remain attached. The
4 reason I say that is because, for example, in settling
5 one of the matters which I said ought to be on the
6 statement of proposed issues, Mr. Campbell and I agreed
7 to the marginal wording that said: "This aspect is for
8 Panel 4; the other aspect can be dealt with in Panel
9 1," although looking at the Panel 1 list, it's not
10 explicitly there. So I think the interpretation that
11 one -- interpretive capability one gains from that,
12 those marginal notes will be important, ultimately.

13 MR. HARPUR: When you say marginal notes,
14 Mr. Poch, do you mean the addendum to Mr. Campbell's
15 proposed statement?

16 MR. POCH: Yes.

17 MR. HARPUR: Where he -- matters to be
18 deferred?

19 MR. POCH: Yes, where he indicates what
20 their position is or what the agreement is on how it is
21 to be dealt with.

22 MR. B. CAMPBELL: I agree with Mr. Poch
23 on this list. I agree with Mr. Poch on this because,
24 in order for the list of matters to be dealt with in
25 later panels to make any sense, you really have got to

1 have in front of you the parties' statement of
2 concerns. So it seems to me that you have an issues
3 list, you have the statement of concerns, which has
4 been discussed with the parties, that gives more detail
5 for individual parties. And you have matters from
6 that, that we have agreed would be dealt with on later
7 panels. I believe that that is a comprehensive package
8 that gives the Board good guidance to the way Panel 1
9 will proceed.

10 MR. HARPUR: Is there anyone who is not
11 in agreement with the appropriate format or the issues
12 list, then would he, as it were -- a final issues list
13 on the top, beneath which one would have the statement
14 of concerns, and somewhere in that package would be a
15 list saying these matters would be deferred to another
16 Panel; this kind of compendium as opposed to a single
17 page or a two-page, here is the final issues list and
18 let's set aside all of the documentation that's
19 generated in order to get there. Is there anyone who
20 doesn't agree with that approach?

21 (No response)

22 If I could return for a moment to the
23 draft issues list which has been distributed? As
24 indicated, the theory in creating that document was
25 that it did nothing to reduce Hydro's statement and

1 indeed probably expanded it, as David Poch has
2 suggested.

3 To put this slightly differently, to the
4 extent that a statement of concern or an issue raised
5 in the statement of concerns is included in Hydro's
6 statement, so too would it be included in the draft
7 issues list which we have circulated. To the extent
8 that a matter in a statement of concerns has been
9 excluded or deferred, so too would it be, by reason of
10 this draft issues list.

11 I suppose a third way of saying that is
12 that, with my issues list, I would be adopting the
13 proposals of Mr. Campbell as to deferrals, and
14 reiterating his position on that. It would simply be
15 another document doing the same thing in a different
16 format.

17 Subject to this, there were, I think,
18 about five issues that appeared in the statements of
19 concerns for which I couldn't readily find a home,
20 notwithstanding that Mr. Campbell appears to have taken
21 the view that they were acceptable issues for inclusion
22 in Panel 1. Because there are so few of these issues,
23 I intend to make reference to them in the course of our
24 discussion this morning. If my concerns are allayed, I
25 won't go further with them. If I continue to feel

1 after our discussion that there are reasons to doubt
2 the validity of inclusion in Panel 1, I would refer
3 that matter to the Panel and allow the parties
4 concerned to make their submissions about the points.

5 Jay, I see some consternation on your
6 face.

7 MR. SHEPHERD: Do I understand you to be
8 saying that, if Hydro and all of the intervenors have
9 agreed that a particular issue should be in Panel 1,
10 that we are going to go through an exercise of
11 determining whether that's the case?

12 MR. HARPUR: That's one way of putting
13 it. Another way of putting it is that a decision by
14 you and Hydro that all of your issues would be included
15 in Panel 1 is probably going to carry the day, but I
16 have some questions about it.

17 So, to come back to the draft issues
18 list, I know from Mr. Campbell and indeed I know from
19 this morning's remarks, that not only is it a matter of
20 preference on the part of Mr. Campbell to stick with
21 his format, and certainly the chronology of his format,
22 but I gather that that is the consensus among the
23 parties.

24 The Board, as I indicated, has before it
25 the draft issues list and in addition your materials,

1 and I don't intend to advocate one format or the other,
2 or a marriage of the two. I will leave that matter to
3 the Panel, but I would like them to have the choices
4 before them.

5 Let me come to, if I may, the concerns
6 that I had about specific concerns raised and whether
7 they ought to be included.

8 Jay, if I could speak to you first about
9 the issues list you have submitted. I believe the
10 correspondence that you and Mr. Campbell exchanged
11 yesterday, and of which I have copies, may have given
12 me an answer to this. There are two issues, 1-7 and
13 2-6. Perhaps the best thing for me to do is ask you
14 what agreement you and Bruce have about the inclusion
15 of all or part of those issues.

16 MR. SHEPHERD: We have agreed that --
17 this is probably most adequately addressed in my letter
18 to you, faxed last night. There are two aspects to
19 this issue: One is a forecasting aspect and one is a
20 planning aspect.

21 The forecasting aspect is, you ask the
22 forecaster, what are the appropriate uses to which your
23 forecast should be put? What are their strengths and
24 weaknesses? What should you do with them, then what
25 shouldn't you do with them?

1 The planning side of it is, given a
2 particular type of data, i.e., a forecast, how do you
3 use it in planning?

4 The forecasting component of this general
5 issue in 1-7 and 2-6 is part of Panel 1. It's the
6 forecasters that you ask, what good are their models.

7 The planning issues will, probably, I
8 guess, become 11.

9 MR. HARPUR: The specific subheading,
10 Risk Predictability of Generated Options, Planning
11 Flexibility and Costs, some of those struck me as going
12 straight to the planning session, as opposed to the
13 forecasting session. Am I wrong about that?

14 MR. SHEPHERD: No. The question is not
15 about the four subsections. The four subsections are
16 the predicate of the question. The actual question is,
17 is Ontario Hydro's forecasting the appropriate way of
18 getting information to deal with those issues? Which
19 is a forecasting question; it's not a planning question
20 at all.

21 MR. HARPUR: Thank you. I am satisfied.

22 MR. SHEPHERD: Were those the only
23 concerns you had on my list?

24 MR. HARPUR: Yes, they were.

25 Northwatch, issues 1 through 6.

1 MR. GREENSPOON: Those are not matters
2 that Mr. Campbell and I have discussed.

3 Issue No. 1 is basically that Ontario
4 Hydro has not examined alternative economic futures in
5 Ontario, that, for example, we don't believe that in
6 their forecasting, they have looked at a sustainable
7 future for Ontario. It's more economic growth of this
8 nature that we are going through right now. It is a
9 very -- it is, basically, although Hydro says it isn't,
10 we believe it is just extrapolation and it doesn't take
11 into account any examination of where we might want to
12 be, in an environmentally sound way in the future.

13 MR. HARPUR: I read Mr. Campbell's
14 document as encompassing that kind of issue, where it
15 talked on page 1G about the potential for change in the
16 economy arising from societal factors, for example,
17 sustainable development; is that the issue to which
18 this addresses?

19 MR. GREENSPOON: Yes.

20 MR. HARPUR: I see. I got excited when I
21 saw the words about electrical system planning, because
22 that struck me as going to a different panel. But, in
23 fact, this is a question concerning sustainable
24 development, whether that has been duly considered by
25 Ontario Hydro.

1 MR. GREENSPOON: I have difficulty with
2 the phrase "sustainable development". I like to use
3 the phrase "sustainable future".

4 MR. HARPUR: Mr. Campbell, have you any
5 comment on that?

6 MR. B. CAMPBELL: This is one on the
7 forecast side that is encompassed both by the reference
8 that you made, and by the, I think you will see under
9 the general heading in our statement of proposed
10 issues, a matter that deals with forecast approach of
11 targeting, or the approach of targeting versus
12 forecasting. I think it is also encompassed in there.

13 So, to the extent that we are dealing
14 with this from a forecast viewpoint, as opposed to a
15 facilities planning response to the forecast, then we
16 are satisfied.

17 MR. HARPUR: Mr. Greenspoon, I'm sorry to
18 get you up again. There is one other question I had
19 and that had to do with your issue No. 6, where you
20 said, "Hydro has no forecast that differentiates
21 between northern and southern Ontario electrical use,
22 nor what impacts different forecasts might have on an
23 economic strategy for the north."

24 The first part of that question clearly
25 seems to be within the framework of this Panel. The

1 impacts, however, on forecasts for the north or for any
2 other part of the province does not strike me as
3 falling within the ambit of Panel 1.

4 MR. GREENSPOON: Well, I guess the issue
5 there is that Ontario Hydro's forecasts, and what the
6 ramifications of those forecasts are, will have impacts
7 on the economy of the north. Whatever Ontario Hydro
8 does is going to impact on the north.

9 MR. HARPUR: I don't disagree with that.
10 I am just wondering whether the appropriate time to
11 cross-examine on that matter is the point. We are
12 talking about forecasting, which, although undoubtedly
13 we are going to talk about biases and judgment calls,
14 and so forth, is to a large extent to me a neutral
15 exercise.

16 Starting to talk about what you are going
17 to do with your economic forecasts in the way of
18 planning, and how that in turn would impact upon the
19 region, seems to me to be something that comes later in
20 the piece. And I am wondering if that is one that
21 could be set aside. Otherwise, the Panel, if we accept
22 the idea of this issues list being a compendium of the
23 statement of concerns and Mr. Campbell's proposed
24 statement, we have this before them and they may well
25 think, indeed, we are going to talk about impacts on

1 the north's economy at the forecasting panel level, and
2 I am wondering if that's appropriate.

3 ---Off the record discussion.

4 MR. GREENSPOON: I think Mr. Campbell and
5 I have agreement on the matter, but, I mean, I am not
6 sure what I should say to you to satisfy you.

7 What Northwatch is interested in is
8 that -- the plan that Ontario Hydro proposals has a
9 definite impact on the north and that's a forecasting
10 impact; it's not a planning impact. And these are the
11 economists that Ontario Hydro is putting in the Panel.
12 So that, whatever these economists say, we are saying
13 didn't take into account any of the economics of
14 northern Ontario and what that future is going to be.

15 MR. HARPUR: That seems to me to be two
16 different things. The one is, have you drawn out
17 enough data concerning northern Ontario to make a valid
18 economic forecast in the aggregate, put the piece
19 together properly. The other is, having acquired that
20 data, properly put it together, and come up with a plan
21 to respond to what you foresee, how will it impact on
22 our region?

23 The first half of all that, quite
24 clearly, is forecasting. It's the right issue.

25 MR. GREENSPOON: Well, I don't think

1 that's what I am saying, but...

2 MR. B. CAMPBELL: I don't read this
3 question as encompassing the second half of your
4 concern, that is the planning response. It is clearly,
5 I have read it, as impacts different forecasts might
6 have on economic strategy or economic future of the
7 north. I view this as speaking only to the forecast
8 side of that equation, not to the planning response to
9 it at all.

10 MR. HARPUR: All right.

11 MR. POCH: Mr. Harpur, I feel I am
12 compelled to rise, because I keep hearing things come
13 out of your mouth which somewhat frighten me, because
14 I'm afraid they may be taken as areas of agreement;
15 such things as the neutrality of this part of the case.

16 MR. HARPUR: I made a point of saying it
17 was relatively neutral. I realize that as --

18 MR. POCH: Fair enough.

19 I think it is -- in this distinction
20 between planning and forecasting, the position we will
21 be taking, and the position of Northwatch and others,
22 there is no data when we are talking about the future.
23 It's not a question of whose guess is more accurate,
24 from our perspective. That's not our case.

25 What we want to be able to talk about in

1 Panel 1 is saying, there are a number of possibilities
2 for the future, and we do want to talk about the
3 relative strengths and weaknesses, and not in great
4 detail, of some of those different possibilities. And
5 we want to suggest, indeed, as an alternative to
6 forecasting, perhaps we can call it scenario-casting,
7 where one of the things we want to elucidate, at this
8 point, is another possibility, other than the one that
9 Hydro has selected by extrapolating the status quo.

10 MR. HARPUR: I understand. You and I
11 talked about that yesterday and I think we are in
12 agreement that that kind of, what I regard as a kind of
13 forecasting, falls within the ambit of Panel No. 1.

14 MR. POCH: Fine. I just want that on the
15 record, if that's understood by all then we don't have
16 any problems. It really becomes semantics, as to how
17 you list it.

18 MR. HARPUR: Yes, although, clearly, what
19 we do is go with the statements of concerns submitted
20 and Mr. Campbell's response to those statements of
21 concerns, and leave it at that. This would be an issue
22 before the Panel. It would be on the final issues
23 list.

24 I think that Mr. Shepherd has a concern
25 about whether or not if we were to go with my draft

1 issues list, this, what I regard as an alternative
2 method of forecasting, finds its way into that other
3 list. Mr. Shepherd has expressed that concern.

4 MR. POCH: I think there is always going
5 to be room for interpretation in these lists. I think
6 the fact that we have had the discussions and our
7 mutual understanding is now on the record in today's
8 transcript and the documents leading up to that, if we
9 all appreciate, if we are all going to be at liberty to
10 point to these discussions to give some context, like
11 pointing to Hansard for statutory interpretation, then
12 I think that's of assistance to me. I rest there.

13 MR. GREENSPOON: Well, I thank Mr. Poch
14 for straightening that out to a large extent, but I was
15 having difficulty understanding what issue you were
16 raising, and I apologize for that.

17 MR. HARPUR: Maybe the lack of clarity is
18 mine.

19 I thought that what you had said in issue
20 No. 6 is that I should talk about the impacts on the
21 north of what happens here. And the impacts on the
22 north seem to me not a forecasting matter, but what
23 comes after the forecasting matter.

24 MR. GREENSPOON: But you see, it's
25 connected to the first part of the sentence. Hydro has

1 no forecast to differentiate between the north and the
2 south.

3 MR. HARPUR: Maybe we can shorten this by
4 my saying that I understand from Mr. Campbell and from
5 you, both of you are in agreement that you are not
6 trying to talk about planning here.

7 MR. GREENSPOON: Right.

8 MR. HARPUR: If that's the case --

9 MR. GREENSPOON: Well, yes, with the
10 proviso that the differences between forecasting and
11 planning, that we understand what those are.

12 MR. HARPUR: Yes. I don't think anyone
13 is -- certainly on my list or, I believe, on Mr.
14 Campbell's, there is this talk about the transformation
15 of forecasting into planning. That's fair game.

16 MR. GREENSPOON: Right. But the point is
17 we have said Hydro hasn't done this type of forecasting
18 between the north and the south. Hydro has not got
19 that kind of forecasting. And as a result of that,
20 they don't forecast what the impacts those different
21 forecasts or scenarios will have on northern Ontario
22 and our economy. And I think that's relevant to Panel
23 1.

24 MR. HARPUR: Well, certainly that would
25 fall within the scope of the regional considerations,

1 which are on the draft issues list that we prepared. I
2 believe that kind of issue is also on Mr. Campbell's
3 list, as well.

4 MR. GREENSPOON: Yes.

5 MR. HARPUR: And he is nodding.

6 MR. B. CAMPBELL: Yes, it is. Various
7 people have stood up and have made what I will call
8 statements of assumptions about what our -- in
9 particular, Mr. Poch saying it's simply an
10 extrapolation of those. I am not going to argue those
11 here, but I think there is a good understanding between
12 certainly Mr. Greenspoon and myself as to the ambit of
13 what he is contemplating in this area.

14 MR. HARPUR: There are two statements of
15 concerns with a similar issue in there, it's a regional
16 sort of issue, between the statements of concerns of
17 those of the Nipigon Aboriginal Peoples Association and
18 Grand Counsel Treaty No. 3 and Teme-Augama Anishnabai.
19 And given the very recent ruling of the Panel
20 concerning the interrogatories matter, which, in my
21 view, raised a very similar issue, what I propose to
22 do, with your agreement, is simply put before the Panel
23 this morning, once they have come in, Issue No. 3 on
24 the Nipigon Aboriginal Peoples Association list and
25 Issue No. 1 on the NAN list.

1 It may be that the Panel, collateral to
2 its decision concerning interrogatories, will be making
3 some sort of a pronouncement -- should now make some
4 sort of a pronouncement of these developments of the
5 issues, as they have been expressed in those statements
6 of concerns. I am certainly not in a position to
7 resolve that matter myself, but I think it should come
8 now before the Panel.

9 Do either of those parties disagree with
10 that approach?

11 MS. KLEER: I am Nancy Kleer for NAN and
12 Treaty 3. That would be acceptable.

13 MR. HARPUR: Thank you.

14 MS. OMATSU: Maryka Omatsu for NAPA.
15 That is acceptable.

16 MR. HARPUR: The only other question that
17 I had about an issue raised in the statement of
18 concerns had to do with Solar Energy's statement of
19 concern. Is there a representative of that intervenor
20 here today?

21 MR. RODGER: Since counsel for SESCO
22 can't be here, but since yesterday evening I had spoken
23 to counsel in Ottawa and asked that they speak to Bruce
24 to resolve any potential concerns, I wonder if I could
25 ask Bruce to report to us on the outcome of that

1 conversation, and perhaps he could address any concerns
2 you have.

3 MR. HARPUR: Thank you, Mr. Passmore.

4 Just to put a framework to all of this,
5 in respect of issues 1, 2 and 3 on the statement of
6 concerns of SESCOI, I wondered how the matter of solar
7 technology would affect either the economic forecast or
8 the load forecast. And I noted that you had not,
9 Bruce, in your response to this document, taken issue
10 with those things. The question has remained in my
11 mind.

12 MR. B. CAMPBELL: No. The way we have
13 read the questions, and I confirmed this with Mr.
14 Horwood, the counsel for SESCOI, in a telephone
15 conversation yesterday, is that these three issues
16 relate to the effect on the load forecast. That is,
17 they want to cross-examine our Panel and determine
18 whether these matters that are raised in 1, 2 and 3
19 have had an effect on the load forecast, per se. I
20 think they are entitled to ask that question.

21 I think my own judgment is that that
22 would be a relatively short cross-examination, if that
23 is the purpose of it.

24 We would not take any issue with SESCOI's
25 right to ask whether certain matters have been taken

1 into account in the load forecast, and they agree that
2 that is the purpose of any questioning that they might
3 raise. And it is in that context, we didn't put it on
4 the list originally, and they are satisfied that it is
5 dealt with.

6 MR. HARPUR: Thank you. I no longer have
7 any problem.

8 There is only one other item on my
9 agenda, subject to things that you might want to add,
10 and that had to do with the order of cross-examination.
11 And although this doesn't quite fit into the scoping
12 session framework, I want to remind people that the
13 Panel is anticipating that, before cross-examination
14 begins, the parties will, among themselves, and
15 presumably, following the generation of this final
16 issues list, will have worked out who is going to
17 cross-examine, and on what issues, and the length of
18 time they expect to take. And parties will be expected
19 to announce those things to the Panel in advance of
20 their cross-examinations.

21 I make no comment on that. It may be
22 something that some or all of you would want to speak
23 to when we are joined by the Panel a little later this
24 morning.

25 ---Off the record discussion.

1 MR. HARPUR: To be clear, my
2 understanding of what it is the Panel wants is not an
3 announcement of what you are going to cross-examine on
4 and how long you are going to take at the moment you
5 stand up to do it, but rather a collective announcement
6 in advance of the first of the cross-examinations
7 indicating those things.

8 MR. SHEPHERD: I don't know whether I am
9 speaking for everybody, but until I have seen the
10 direct evidence, I haven't the slightest idea how long
11 my cross-examination is going to be. Immediately after
12 the direct evidence, I think I can estimate it, but
13 until I have seen it, I would be remiss --

14 MR. HARPUR: No, as I indicated, it would
15 be before the first of the cross-examinations that one
16 would expect this announcement, not prior to direct
17 evidence.

18 MR. GREENSPOON: My reading of the rules
19 is that there is, I think, at least a three-stage
20 cross-examination in that those that support Hydro
21 cross-examine first; those that oppose the undertaking
22 cross-examine second; and those that are supposedly
23 neutral, like the government, would cross-examine
24 third.

25 MR. HARPUR: This came up in the course

1 of our meeting with Mr. Campbell on the 9th, and what I
2 said then, and understand to be the case, is that that
3 is the expectation of the Panel, that order of
4 cross-examination. But the Panel, to a very large
5 extent, is relying upon the parties to work out the
6 appropriate chronology of cross-examinations. And to
7 the extent that some modification of that expected
8 order occurs, so long as it's in accord with reason, I
9 don't think the Panel is going to have a view.

10 MR. GREENSPOON: Given that that's what
11 the rules say, my point is that we may have some
12 questions in cross-examination based on what AMPCO asks
13 in cross-examination, for example. So I wouldn't be
14 prepared, necessarily, to give an estimate before I
15 heard those that are supporting Hydro cross-examine on
16 the first Panel. And that's the first issue; and
17 secondly --

18 MR. HARPUR: May I respond to that?

19 Just like the issues list, these things
20 are subject to fine-tuning as the piece unfolds. We
21 can't do it all now, but we can give our best estimate.
22 That's what the issue list is about, in my opinion, so,
23 too, would be an estimate of cross-examination. The
24 whole business of -- material may appear, as the matter
25 unfolds, that may change your estimate dramatically,

1 and that would a matter of speaking to the Panel about
2 that fact.

3 MR. GREENSPOON: Right.

4 Secondly, I think, at least my initial
5 reaction is that it would not be within the scope of
6 proper cross-examination to say what issues we will be
7 addressing, and what issues others will be addressing,
8 and therefore we will not be addressing those issues.

9 I don't think, right now, that I would be
10 prepared to give up any scope of any cross-examination
11 to any other parties, because we all come at it from a
12 different perspective. We represent the non-aboriginal
13 constituency of northern Ontario, those that are
14 opposed to the undertaking. And that perspective is
15 different, even though the issues may be the same, than
16 other parties at this hearing. And I would propose to
17 cross-examine on a broad range of issues.

18 MR. HARPUR: Well, presumably then, what
19 you would be doing when the time came to announce what
20 you would be doing in cross-examination is to indicate
21 that, although you are covering some of the same
22 subject matters, you are dealing with it from a
23 different slant, and, accordingly, you should be
24 allowed to do it.

25 But the fact remains that the Panel does

1 expect you to do a certain sorting out of issues with
2 other parties in advance, prior to cross-examination.

3 MR. KELSEY: Do I understand that you are
4 suggesting that all counsel get together and put all
5 their total estimates together and then give one
6 amount? In other words, we will all be three hours
7 cross-examining, or two days, or whatever, in total?

8 MR. HARPUR: I don't know the answer to
9 that, Brian. I think the expectation is more that it
10 be an individual estimate than an aggregate.

11 MR. KELSEY: Yes.

12 MR. HARPUR: Excuse me one moment.
13 ---Off the record discussion.

14 MR. HARPUR: The Panel may do the
15 arithmetic, figure about how long all these things are
16 likely to take, but I think that all could be expected
17 of an individual counsel is to say: This is how long I
18 will expect to go.

19 MR. KELSEY: Is it intended that there be
20 a large amount of flexibility? Because, I mean, I have
21 cross-examined often enough to know that sometimes you
22 can estimate half an hour, and you come across some
23 nuggets that expanded it very quickly to two hours.

24 MR. HARPUR: I can't tell you have how
25 rigorous the Panel will be about keeping --

1 MR. KELSEY: No.

2 MR. HARPUR: I think that's something you
3 should ask them.

4 MR. KELSEY: Yes, I also wondered, too,
5 about the jurisdiction of the Board to limit the time
6 spent in cross-examination too rigorously. I think
7 that the only limitation on cross-examination is
8 relevance, materiality; you know, repetition; not the
9 amount of time. As long as I am being to the point and
10 cross-examining the purpose, then I think the really
11 time, really, is irrelevant.

12 I understand the Board's concern, that
13 they don't want a lot of repetition and people dragging
14 things out, but I don't think that that necessarily is
15 always taken care of by artificial time limits.

16 MR. HARPUR: Are there matters which you
17 would like to see on the agenda for the session with
18 the Panel that won't be addressed in what we have
19 discussed already?

20 MR. KLIPPENSTEIN: Pollution Probe has
21 not submitted a statement of concerns, in the
22 assumption that most of its concerns will be dealt with
23 in another panel, and any matters that might arise that
24 might be relevant are likely to be covered by other
25 parties. However, does that preclude Pollution Probe

1 from participating in cross-examination, should it
2 become necessary?

3 MR. HARPUR: The presumption would be
4 that you are not going to be participating in
5 cross-examination, but, again, there is a flexibility
6 to the system. In the event that something arose that
7 is clearly of significance to Pollution Probe, and you
8 stood up and asked for a leave to conduct a
9 cross-examination, I can't imagine your being excluded.
10 That's my view; it's not the Panel's position.

11 MR. KLIPPENSTEIN: I understand that, and
12 I think it unlikely that will happen, but fair enough.
13 Thank you.

14 MR. HARPUR: One other issue I did
15 neglect to go over, and that is the question raised
16 yesterday by Jay Shepherd in discussion with me about
17 his or any other parties' ability to cross-examine in
18 an area that shows up on the final issues list,
19 whatever form that may take, but an area about which he
20 hasn't made any noise in his statement of concerns.

21 Do I have that right, Jay?

22 That's an issue that I would like to put
23 before the Panel, so that we are all clear on the
24 subject. My understanding is that, so long as the
25 minimizing of unification takes place - and there is

1 discussion among counsel to see to it that the
2 cross-examinations are unfolding as they should -
3 people would not be precluded from asking questions
4 about an issue, notwithstanding that it does not appear
5 on their statement of concerns. That is something that
6 bears confirmation with the Panel, but that is my
7 expectation.

8 MR. B. CAMPBELL: There are two matters,
9 Michael, there are two matters that I assume the Panel
10 will be dealing with, one is this question about the
11 reliance on filings, and the other is, I believe I
12 should be clear, that there may well be views or issues
13 for other parties with respect to a panel, but which
14 are their issues and we would not be addressing
15 initially in our case. I just want that to sort of
16 flow clear.

17 MR. HARPUR: Is this in keeping with the
18 discussion we had the other day--

19 MR. B. CAMPBELL: Yes.

20 MR. HARPUR: --to the effect that
21 although you have put an issue on your proposed issues
22 list, that's not to say that you have any intention of
23 calling evidence.

24 MR. B. CAMPBELL: I think I stated it
25 somewhat differently. We see the list of proposed

1 issues as potentially encompassing some issues on the
2 statement of concerns that we do not intend to address
3 in our case in chief, because they will be part, in
4 effect, of other parties' cases.

5 MR. HARPUR: I am quite confident that
6 you are not taken to be, or to be taken to be, agreeing
7 to call evidence on an issue because it appears on that
8 list.

9 MR. B. CAMPBELL: That is fine. I have
10 talked to this with a number of parties. I think if
11 that's the case, then, I may just briefly speak to the
12 Board about how we understand that's going to be done,
13 just basically to record, again, the kinds of
14 conversations that I have had with parties about that.

15 The other matter, I don't know whether
16 you want to deal with today, is the matter that I
17 raised with respect to witnesses under
18 cross-examination.

19 MR. HARPUR: Yes, that issue, Bruce, why
20 don't you state it so people are clear about your
21 position?

22 MR. B. CAMPBELL: There is a question
23 behind you which may pertain to what you are about to
24 say.

25 DR. FRANKLIN: In the absence of our

1 counsel, I wish clarification on what Mr. Campbell just
2 stated. I am clear that Hydro will not raise certain
3 issues. Are we nevertheless free to cross-examine
4 Hydro's witnesses for the reasons for not including
5 certain issues?

6 MR. B. CAMPBELL: Yes.

7 DR. FRANKLIN: Because that seems to me
8 one of the major problems in forecasting, not so much
9 what is there, but what is not there, and the reasons
10 for excluding certain considerations.

11 I wish to have it on record that we may
12 be free to cross-examine Hydro's witnesses for the
13 reasons for exclusion.

14 MR. B. CAMPBELL: I take no dispute that
15 people are entitled to cross-examine on matters which,
16 although we may not have addressed them, they feel are
17 pertinent to a position that they wish to take in their
18 case. That is perfectly appropriate cross-examination.

19 That is not to say, at some point, there
20 won't be some argument about relevance or materiality,
21 but the general principle I take no dispute with.

22 MR. HARPUR: I am instructed that the
23 Voice of Women did not file a statement of concerns; is
24 that correct?

25 DR. FRANKLIN: We did not file a

1 statement of concerns for Panel 1. We did file a
2 general opening statement to the Board, because we
3 essentially feel that certain issues, as indicated by
4 Mr. Greenspoon, between forecasting and planning, fall
5 between the panels and need to be appreciated by the
6 Board itself as matters of principle, rather than as
7 matters of technicalities, which the issues in each of
8 the panels, be it Panel 1, 4 or 11, tend to take. So
9 we choose as an intervenor to file a general opening
10 statement with the Board, which is in Ms. Morrison's
11 hands.

12 MR. HARPUR: My response to that is that
13 it is inappropriate to conclude that the filing of a
14 general opening statement with the Board constitutes a
15 sort of blanket statement of concerns for all panels,
16 or have I misunderstood you?

17 DR. FRANKLIN: No, I am well aware and I
18 understand that. If in Panel 4, it will be necessary
19 for us, we will file statements of concern.

20 Would the fact that we did not file a
21 statement of concern with regard to Panel 1 exclude us
22 from the right to cross-examine -- our counsel from the
23 right of cross-examining?

24 MR. HARPUR: The presumption is that you
25 will not be cross-examining, or your counsel will not

1 be, and given the state of affairs that exists right
2 now, it will be incumbent on your counsel to seek leave
3 to cross-examine.

4 DR. FRANKLIN: Yes. Therefore, in
5 effect, I will get from you a comment on Pollution
6 Probe's question, who also did not file a statement of
7 concern, inquired about their leave.

8 MR. HARPUR: My response to you would be
9 just the same.

10 DR. FRANKLIN: Yes, thank you.
11 ---Off the record discussion.

12 MR. HARPUR: It appears I should have
13 prepared an agenda before I started so I stop adding
14 things as we go, but one other item that has been
15 brought to my attention is this business of opening
16 statements. And just as with the cross-examinations
17 and their order, it would be very helpful if the
18 parties could work out that business among themselves.
19 So, too, it is hoped that there will be agreement, at
20 least, an ascertainment by each party of whether it's
21 going to make an opening statement, how much of the 15
22 minutes are likely to be consumed by that opening
23 statement, and the order in which they will be made.

24 If there is no other business, what I
25 propose to do now is to - it's 10:10 by my watch - is

1 adjourn until eleven o'clock and I will ask the Panel
2 to join us at that time. Thank you.

3 ---Recess at 10:10 a.m.

4 ---On resuming at 11:10 a.m.

5 ---Members of the Board entered the Hearing Room.

6 THE CHAIRMAN: Please be seated.

7 MR. HARPUR: Good morning, Mr. Chairman,
8 Members of the Panel.

9 I am pleased to report that there seems
10 to be what has been described as extraordinary...

11 ---Off the record discussion.

12 MR. HARPUR: Let me begin again.

13 There appears to be extraordinary
14 consensus among the parties as to how we might scope
15 the issues for Panel 1. As you know, statements of
16 concerns have been submitted by interested intervenors,
17 and Hydro has prepared a proposed statement of issues.
18 And subject to what I believe are minor amendments
19 being made as we speak by Ontario Hydro, there is
20 agreement among the parties and Hydro that the
21 appropriate final issues list is in effect a compendium
22 of the statements of concerns, Hydro's statement of
23 proposed issues, including the addendum to Hydro's
24 statement of proposed issues, which is the 'Matters to
25 be Deferred' list; I believe there are about three

1 pages of that.

2 MR. B. CAMPBELL: There will be seven.

3 MR. HARPUR: There will be seven of those
4 pages.

5 It might be appropriate for me to allow
6 Mr. Campbell at this stage to address you, concerning
7 what amendments are going to be made or would be made
8 to his draft issues list.

9 ---Off the record discussion.

10 MR. HARPUR: For purposes of clarity, it
11 is not the proposed issues list of Ontario Hydro's
12 which would undergo amendment, or is undergoing
13 amendment, but rather the addendum to it, the matters
14 to be deferred, that will be enlarged.

15 THE CHAIRMAN: I have in front of me,
16 attached to the letter or the memorandum from Mr.
17 Campbell, dated April 5th, a list headed 'Panel 1,
18 Economics and Load Forecast, Statement of Proposed
19 Issues', it goes on for three pages. Is that what you
20 are talking about?

21 And then, after that, 'Matters to be
22 Addressed in Later Ontario Hydro Panels' but included
23 in Parties to Panel 1's Statement of Concern.

24 MR. HARPUR: That's correct, Mr.
25 Chairman, and again it is the added pages, those that

1 come after page 3, which are undergoing amendment.

2 THE CHAIRMAN: So you are telling me
3 that, except for those matters in the second list, that
4 all the concerns which are here in the various parties
5 are now considered to be caught by the three-page list;
6 is that right?

7 MR. HARPUR: Except to the extent that
8 those additional pages have the effect of pushing an
9 issue to another panel. Those that remained are those
10 that are found, and they are all there.

11 THE CHAIRMAN: They are all there; is
12 that right?

13 MR. HARPUR: Yes. One of the issues
14 which arose in the course of our discussion earlier
15 this morning is the effect of the failure to file a
16 statement of concerns on the ability to cross-examine.
17 A couple of intervenors had concerns about that issue.
18 One is the Voice of Women.

19 THE CHAIRMAN: What do our directions say
20 about that?

21 MR. HARPUR: They say that in the absence
22 of the filing of statement of concerns one lacks the
23 ability to cross-examine.

24 I have a number of items on my agenda,
25 but what I proposed to do is defer to the parties as I

1 came to each one. This may be an appropriate time to
2 allow those submissions given that you think we should
3 do so.

4 THE CHAIRMAN: The one about failing to
5 file a statement of concern?

6 MR. HARPUR: Yes.

7 THE CHAIRMAN: Perhaps I could shortcut
8 it a bit. We don't want to be draconian about this.

9 Generally speaking, we would like to know
10 the people who are intending to cross-examine, and that
11 is revealed by the statement of concerns. The Panel,
12 of course, has a discretion to control its process and
13 can, in appropriate cases, waive a requirement such as
14 the one that Mr. Harpur suggests.

15 DR. FRANKLIN: My name is Ursula
16 Franklin. I speak on behalf of Voice of Women, in the
17 absence of our counsel, Kathy Spoel.

18 Our failure to "focus" on Panel 1 in our
19 statement of concern was primarily related to the
20 issues that Ontario Hydro had said would be covered in
21 Panel 1. Our concern regarding the planning
22 assumptions was not included in this. For that reason,
23 our organization chose to make an opening statement,
24 file an opening statement, with the Board, because of
25 the concerns that we have over our several panels.

1 We now find that, while we wish to let
2 our opening statement, which covers more than one
3 issue, stand that Ontario Hydro, in that memorandum
4 reported by Mr. Campbell, accepts as subjects of
5 cross-examination questions relating to the absence of
6 certain considerations. Our concern was, primarily,
7 and remains with considerations not taken into account
8 in the subject matter of Panel 1. And we now find
9 that, if you look at page 1 of the memorandum of Mr.
10 Campbell, point 3, that other parties have filed indeed
11 concerns on subjects that Ontario Hydro has not
12 addressed.

13 THE CHAIRMAN: I'm sorry, I didn't get
14 the item you are referring to.

15 DR. FRANKLIN: If you turn, sir, to the
16 title page -- the transmission page of the memorandum,
17 there is an item 3 at the very bottom, on the very
18 first page of the transmittal. Yes, the page you have
19 before you now. Item 3 at the bottom of the page.

20 THE CHAIRMAN: Does it start off:

21 "Certain parties..."?

22 DR. FRANKLIN: Yes.

23 THE CHAIRMAN: Yes.

24 DR. FRANKLIN: We would cross-examination
25 on subjects, for we are asking the witnesses for the

1 reasons why Ontario Hydro did not consider certain
2 issues.

3 What I request from you, in the absence
4 from our counsel, is your permission to do so, and we
5 will file leave, in order to be able to cross-examine
6 witnesses in Panel 1, if this is deemed needed. And we
7 will take part of our opening statement as a related
8 statement of concern. And for this, I would appreciate
9 your permission.
10 ---Off the record discussion.

11 THE CHAIRMAN: We are prepared to do
12 that, Dr. Franklin.

13 DR. FRANKLIN: Thank you.

14 THE CHAIRMAN: Anything else on this
15 particular issue before we go on to the next one?

16 Generally speaking, we would like to have
17 parties who intend to cross-examine a particular panel,
18 we would like to have some indication in advance that
19 they intend to do that, so that we can plan the
20 cross-examination program. We recognize that this is a
21 process where we have to, in a sense, feel our way and
22 we are not going to preclude anything that we consider
23 to have properly come before the Panel, simply because
24 of some failure.

25 We do ask people to try as much as they

1 can to comply with the requirement.

2 MR. HARPUR: Mr. Chairman, a related
3 issue, and perhaps in answer to the question just said,
4 is the effect of the failure of a party to list an
5 issue within their statement of concerns, where that
6 issue appears in someone else's statement of concerns,
7 can the party who has not included it in their
8 statement of concerns, in effect, shelter under someone
9 else's, if it appears appropriate and non-duplicative?
10 Is it possible for them to ask questions in an area
11 that appears in a final issues list, notwithstanding
12 that it doesn't appear in their particular statement of
13 concerns? That is an issue that I believe Mr. Shepherd
14 would like to address; perhaps others, as well.

15 THE CHAIRMAN: Mr. Shepherd?

16 MR. SHEPHERD: Mr. Chairman, the hearing
17 procedures say the statement of concerns defines the
18 ambit of the cross-examination of the intervenor.

19 The process of getting to a final issues
20 list has, perhaps, made us all aware of issues that we
21 should have on our list and didn't. I am not
22 particularly affected by it, but I wish to raise the
23 question, because it appears to be a problem but not
24 for myself. It would seem to me that, once we have a
25 final issues list, as long as we are not duplicating

1 what other people are asking questions about, anything
2 that is relevant, therefore, and is on the issues list
3 is fair game in cross-examination.

4 THE CHAIRMAN: I don't think I would like
5 to trouble with that. I think one of the problems that
6 may come up is, let's say Intervenor A has got
7 something on his issues list, and Intervenor B doesn't
8 have it on. And Intervenor B happens to be the first
9 cross-examiner. It might be that Intervenor B would
10 have to defer and wait, until Intervenor A had dealt
11 with that issue before he came back in. So there might
12 be some splitting of the cross-examination. That is a
13 possibility; I don't know whether you follow what I am
14 saying.

15 MR. SHEPHERD: I think counsel anticipate
16 that we will be expected to work out between us how an
17 issue will be divided up.

18 THE CHAIRMAN: Yes. But I don't see any
19 particular problem in principle.

20 This is one of the difficulties about
21 this particular Panel. Because the issues are so
22 general, there is a tremendous amount of -- quite
23 understandably, the same issues are being raised by a
24 great number of parties. And I think there is a
25 division, as you all know - at least ones with legal

1 background know - there is a division between what kind
2 of answers you can expect from Panel 1, and how these
3 issues are going to be addressed by your own evidence
4 and by other witnesses called.

5 After a while, I expect Panel 1's
6 contribution to the hearing of some of these issues may
7 become exhausted before all the parties who want to
8 cross-examine have a chance to do so. We are going to
9 have to be very careful about that, because you can
10 only say so much sometimes, if there is nothing more
11 you can say, if I can making myself clear. In other
12 words, I don't want cross-examination to be
13 argumentative. And I will be watching that very, very
14 closely.

15 MR. SHEPHERD: Thank you.

16 MR. B. CAMPBELL: On this particular
17 matter, Mr. Chairman, I should just, perhaps, indicate,
18 for the sake of completeness, that it was similar to a
19 matter which was indicated by Mr. Parkinson on behalf
20 the City of Toronto in correspondence with me
21 yesterday. And it was basically a concern that the
22 issues list not be seen as so closed, final and binding
23 that if other matters, which were legitimately
24 unanticipated, arose and were relevant, that, in fact,
25 it would be appropriate to deal with those in the

1 course of Panel 1.

2 He put that proposition to me; I take no
3 argument with it. The Panel may, from time to time,
4 want some explanation from someone who wants to go into
5 a new area, but we do not take the position that
6 matters that are clearly relevant, but, through one way
7 or another have not finally made it on to the issues
8 list, are thereby inevitably excluded forever; subject,
9 of course, to the Board being satisfied, (A), on the
10 relevance, and why it should be gone into at that
11 particular time.

12 THE CHAIRMAN: I guess one of the
13 concerns that I have is that this - I think it is fair
14 to call it the agreed issues list, a bare-bones issues
15 list - it is a very, very general list, and it leaves a
16 tremendous amount of possibility and flexibility if it
17 works. If this way of doing it works, fine; if it
18 doesn't, then we may have to reconsider the extent to
19 which we go into more detail at this particular stage
20 in the process. But if that is the way the parties
21 want to do it, and if it works, that is fine.

22 MR. B. CAMPBELL: I think, in that
23 regard, it is important that the issue or scoping
24 package, if you will, that comes out of this, we all be
25 clear, that what is included is the list of proposed

1 issues, the parties' statements of concern which gives
2 some more definition to their individual views, and the
3 list of matters which are going to be covered at
4 subsequent panels, because that, taken together, gives
5 the Board a package that gives, I think, some pretty
6 good guidance into what is going to happen in Panel 1.

7 But we see those three as being linked
8 together and all necessary components of what I will
9 call the scoping package that comes out of this. On
10 those matters, I believe we have clear agreement
11 between all of the parties who filed statements of
12 concerns, which is quite a different thing to say than
13 saying that there will not be arguments from time to
14 time about how how far a matter should be pursued in
15 cross-examination. But we all know what the other ones
16 intend to pursue and we have worked that out.

17 MR. HARPUR: Mr. Chairman, the fourth
18 item on my list was the appropriate format for the
19 issues list. And I speak with a sense of some
20 loneliness, given the agreement of the parties that has
21 been mentioned.

22 You have before you a draft issues list
23 prepared by Ms. Morrison, Mr. Nunn and by me and that
24 was prepared with a view to recast, into the format,
25 which I regarded as more user-friendly, the issues.

1 That was not designed to either reduce or amend the
2 issues list as it had been prepared by Ontario Hydro,
3 including its addendum. I don't intend to try to
4 advocate one version as opposed to another or a
5 marriage of the two, but I leave to you and ask for an
6 indication of what format the final issues list is to
7 bear.

8 I point out that the parties appear to be
9 quite content with the format to the extent that it was
10 created by Mr. Campbell, and I know that Mr. Campbell's
11 strong preference is to stay with the format he has,
12 and at a minimum, not to change the chronology, which
13 would be changed by switching to the draft issues list
14 which this group prepared.

15 So we are looking for some guidance as to
16 what the format of the final issues list will be, and
17 that will lead to a question of what should be done
18 with some of these preliminary documents in the event
19 that yet another one is going to be created.

20 MR. B. CAMPBELL: Mr. Harpur is quite
21 right when he says that we believe that, given the
22 efforts that have been made to come to some agreement
23 with the parties, that we should stick with the list of
24 proposed issues that has been filed; we do take that
25 position.

1 It is my submission that considerable
2 effort having gone in by both the parties and ourselves
3 to reaching that agreement, that at least an
4 understanding that this is going to be a learning
5 process as to how to make this whole package most
6 useful, where the parties come before you and say,
7 "This is, for the first time around, what we believe
8 you should use," that in fact the possibility of adding
9 yet another list, which people have just received
10 yesterday afternoon, introduces the possibility for
11 additional confusion, over and above that which we have
12 made a great effort to sort out over the last few days.

13 Certainly our position is that, for Panel
14 1 at least, we recommend that we give it a try with
15 what the parties have agreed to. Everyone will get
16 some experience with that. And to the extent that, in
17 the course of Panel 1 or at the end of it, or sooner,
18 the Panel can give some guidance as to what they would
19 like to see from the parties subsequently, that would
20 obviously be appreciated by everyone. But we do
21 suggest that the package of the three documents that I
22 have talked about be the scoping package and issues
23 package that come out of this proceeding.
24 ---Off the record discussion.

25 MR. POCH: I rise just to respond to one

1 parenthetical reference of Mr. Harpur's where he had
2 suggested that the chronology was important.

3 I had taken that reference that he had
4 made in your absence earlier to mean that this whole
5 package should be on the record, as it were, and I
6 heartily agree, because of the allocation of topics and
7 the manner in which they have been -- especially where
8 they have been only been partly allocated to another
9 panel, it's very important to assist in interpreting
10 the principal list.

11 But I did want to be clear that I don't
12 want to be taken as agreeing that the list that Mr.
13 Campbell has assembled should be taken as any agreement
14 in terms of the order of importance, in terms of the
15 order he has placed those matters in.

16 We would hate the Board to think that
17 there is any consensus that that should form the
18 framework for the Board's consideration, for the
19 Board's ultimate report, for the Board's manner of
20 approaching this. It's a list, which I think I am not
21 alone in saying, I have not taken as being in any
22 particular order, except perhaps the order that Mr.
23 Campbell is most comfortable with.

24 THE CHAIRMAN: As I recollect, it talks
25 about forecasting the general economic environment in

1 Ontario, followed by a forecast of the basic load, and
2 followed by dealing with uncertainties. That's the
3 framework.

4 MR. POCH: I am not suggesting at all
5 those three broad categories. It was just I didn't
6 want undue emphasis to be placed by the Board that the
7 order that he has presented those categories in, or
8 even the relationships between topics and headings. We
9 haven't very gotten into a debate about that; I have
10 stayed away from it. I think that would bog us down
11 know interminably, because then, really, we would be
12 getting into arguing on positions, as opposed to
13 whether something is merely an issue.

14 So I just wanted that clear for you how
15 we are interpreting it, at least. The Panel may wish
16 to cast it in an order that they find helpful to
17 yourselves, but I just wanted you to be clear, there is
18 no consensus on that particular aspect.

19 THE CHAIRMAN: But there is a consensus
20 on the list itself.

21 MR. POCH: Yes. And hopefully, the first
22 of many, but some of us have a doubt.

23 THE CHAIRMAN: Anyone else?

24 Mr. Harpur?

25 ---Off the record discussion.

1 THE CHAIRMAN: We are all in agreement, I
2 guess it's the most harmonious hearing I have ever had
3 up to this point in my whole career in this, but we
4 will all be willing to give it a try the way you have
5 done it and let's see how it works. We may have to
6 review some of the techniques; maybe not; but let's
7 hope it works.

8 MR. B. CAMPBELL: What I will do in that
9 case, Mr. Chairman, is we have had changes made, up to
10 as late as few minutes ago, made to the matters to be
11 addressed by the 'later panels' section of it. I will
12 have some copies of the amendments, but they are copies
13 of a fax, and they are pretty ratty to read. So I
14 think perhaps what I will do, just for the sake of
15 clarification, so that everybody is working from all
16 the same paper, I will reissue to the parties who have
17 filed statements of concerns, and to Pollution Probe
18 and the Voice of Women, a complete package, so that
19 everybody is working from all of it, instead of having
20 to assemble bits and pieces themselves; so we are all
21 working from the same thing. It will be the statement
22 of proposed issues, everyone's statement of concerns,
23 as originally filed, and the list of matters to be
24 addressed by later panels. And I think then we are all
25 working from the same document and it should simplify

1 matters, if this needs to be referred to.

2 THE CHAIRMAN: Okay. I may have to
3 obtain from people clean copies of their statements of
4 concerns, but sometime over the next week I will get
5 this out to everybody.

6 MR. HARPUR: Mr. Chairman, issues have
7 been raised in the statements of concerns of NAPA,
8 Nipigon, NAN, and OMAA, and I am hoping that you will
9 have those before you. They are what might be
10 described as regional concerns and, in my view, relate
11 to the same issue that was addressed in a very recent
12 decision made concerning interrogatories, the NAN
13 motion in that regard. The intervenors concerned are
14 looking for guidance from the Panel in light of that
15 decision concerning the inclusion or exclusion of these
16 particular concerns. It's No. 3 in NAPA and No. 1 in
17 NAN, and they are looking for guidance as to whether
18 these may properly be dealt with.

19 THE CHAIRMAN: Wait until I find them
20 now.

21 MR. HARPUR: There should be three
22 statements before you: NAPA.

23 THE CHAIRMAN: I have got that.

24 MR. HARPUR: NAN. Treaty No. 3,
25 Teme-Augame.

1 THE CHAIRMAN: Yes.

2 MR. HARPUR: And the third is the Ontario
3 Metis and Aboriginal Associations.

4 THE CHAIRMAN: Yes, I have that now, too.

5 MR. HARPUR: Counsel wish to address,
6 certainly, the concerns No. 3 in NAPA and No. 1 in NAN.

7 THE CHAIRMAN: No. 3, NAPA, and No. 1 in
8 OMAA, did you say?

9 MR. HARPUR: NAN, No. 1. I am afraid
10 that I hadn't realized that OMAA's statement of
11 concerns raised the same issue, until I was spoken to
12 by counsel this morning, so I can't identify which
13 number it is in OMAA's statement; but it's No. 1 in
14 NAN's.

15 THE CHAIRMAN: Probably No. 3. Yes.

16 MS. KLEER: Nancy Kleer for NAN Treaty 3.

17 THE CHAIRMAN: You are just speaking for
18 NAN?

19 MS. KLEER: Yes. First of all, in our
20 first issue there in the statement of concerns, the
21 statement of concerns was addressed to both on-grid and
22 off-grid considerations for various First Nation
23 communities. To the extent that these issues relate to
24 on-grid First Nation communities, we would certainly
25 intend to cross-examine on them in Panel 1.

1 With respect to the ruling that we
2 received this morning, and that I have tried to
3 understand quickly, I think there are some issues that
4 we would like to address that are not specific to how
5 they forecast, but I just would like to go through them
6 and suggest how we might intend to cross-examine on
7 them.

8 The first issue that I would suggest we
9 deal with in cross is to seek an explanation of why the
10 remote communities were not planned for as part of the
11 demand/supply plan.

12 Secondly, does Ontario Hydro fail to meet
13 the energy needs of the people in the remote
14 communities which they service, by failing to forecast
15 for them as part of the bulk electricity system
16 planning, and instead forecasting for them within their
17 remote community electricity system forecasting
18 procedure?

19 Thirdly, why, technically speaking, are
20 remotes not forecasted for in the same system as
21 communities that are serviced by the bulk electricity
22 system? We want to understand the distinction.

23 And then, finally, to the extent that the
24 1990 load forecast, according to one of the
25 interrogatory answers we received, includes forecast

1 information for remote communities, we want to probe
2 that: Why do they include them in the load forecast
3 and yet not plan for them within the DSP?

4 THE CHAIRMAN: I'm sorry, your third
5 question I have written down: Why are the remotes not
6 forecasted for, and then in 1990, they did forecast
7 them.

8 MS. KLEER: That's correct, that is
9 according to one of the answers we received, and I made
10 those submissions.

11 THE CHAIRMAN: Is it just some of the
12 communities they forecast for or all of them in 1990?

13 MS. KLEER: In the 1990 load forecast, my
14 understanding of the answer to the interrogatory that
15 we put in was that the forecast information for remote
16 communities was included in the 1990 load forecast. It
17 was an issue that I had raised earlier in my
18 submissions on this motion.

19 THE CHAIRMAN: There really are two basic
20 questions. One is: Why didn't they plan for remote
21 communities in the DSP? That's one. And the second
22 one is: Why in the planning process didn't they
23 forecast for remote communities? Is that right? Those
24 are the two questions you asked.

25 I am just quite not sure I understand

1 them, because apparently they had forecast for them in
2 the 1990 forecast.

3 MS. KLEER: That's right. It is a
4 confusing point to me, that I think we need to probe
5 further into that.

6 THE CHAIRMAN: I see.

7 MS. KLEER: I can't say anything more at
8 this point because I haven't time to compute fully on
9 this.

10 I don't know if Mr. Campbell wants to
11 address this now, or...

12 THE CHAIRMAN: Are there similar concerns
13 by other groups? Perhaps we could get you all
14 together, then Mr. Campbell could reply to them all at
15 once.

16 MS. OMATSU: Good morning, my name is
17 Maryka Omatsu, and I am speaking for OMAA, and I think
18 in a sense for NAPA. I hesitate --

19 THE CHAIRMAN: For OMAA and NAPA did you
20 say?

21 MS. OMATSU: Yes. I submitted a
22 statement of concerns for NAPA, but I am not actually
23 representing them this morning. But Mr. Harpur
24 suggested that I deal with one of the questions
25 submitted.

1 THE CHAIRMAN: Have you seen the decision
2 that we made on the NAN --

3 MS. OMATSU: Yes, I got a copy of it at
4 the break. I wanted to, as I saw it, divide my
5 questions, which have to do with aboriginal reserve
6 people into two kinds of questions. As I understand
7 this, then deal with them as you dealt with in the
8 motion.

9 First, I take it that you are saying that
10 as any of my clients are served by the remote system,
11 then their issues or concerns are really not going to
12 be considered because we really are dealing at this
13 hearing with the bulk system. And there should be or
14 there may be at some other date a hearing as to the
15 remote system. I will take that as your decision.

16 But I would like to focus us again on the
17 other aspects of my statements of concerns, which
18 basically asked: To what extent were the demand needs
19 of OMAA and NAPA customers considered by Hydro in
20 formulating its demand?

21 THE CHAIRMAN: Whereabouts in your
22 statement is this?

23 MS. OMATSU: It's NAPA question 3 and
24 OMAA, it's the last...

25 THE CHAIRMAN: NAPA question 3.

1 MS.OMATSU: And OMAA, it's the last one
2 on No. 1 and the first one of No. 3. Basically, they
3 are sort of the same kind of information regarding low
4 and fixed income Ontarians living in rural northern
5 and, in OMAA's case, urban settings, were included into
6 the forecasting formula. As I see that demand is
7 consumer-driven, I believe that those kind of questions
8 are relevant.

9 Having taken a look at Mr. Harpur's draft
10 issues list, I see that he also took regional factors,
11 rural north and remote, and having spoken with Hydro's
12 counsel, I understand that there will be some
13 information on these kinds of consumer demands.

14 THE CHAIRMAN: I wonder if you put the
15 microphone just a little closer.
16 ---Off the record discussion.

17 MS. OMATSU: I just wanted to clarify
18 that, although given your decision, that it will be a
19 fit subject for cross-examination, the consumer demand
20 needs of OMAA and NAPA customers and clients; that is
21 to say, rural northern, remote consumers and those
22 consumers on low and fixed incomes.

23 I just had a small question that I don't
24 know if you could clarify for me.

25 THE CHAIRMAN: I'm sorry, I can't hear.

1 MS. OMATSU: I wonder if you can clarify
2 this question for me. Just quickly reading over your
3 decision, it seemed to me that you were holding that,
4 for demand purposes, remote system consumers were not
5 to be considered, but for supply purposes, the areas in
6 which they live, of course, would be considered. Is
7 that the distinction that you are making?

8 THE CHAIRMAN: Just take the NAN people,
9 for example, the impact of the proposed supply option,
10 hydraulic option, is a tremendous significance in that
11 area; of course, that's a relevant matter at this
12 hearing.

13 The issue that we were addressing in the
14 decision was whether the demand factors of remote areas
15 should be considered as part of this.

16 MS. PATTERSON: You were saying, are we
17 differentiating between determining demand from remote
18 communities, as opposed to supply for remote
19 communities, and I don't think that we were
20 differentiating.

21 We heard submissions when we heard the
22 motion that there is a separate planning exercise for
23 remote communities, but we were trying to say in the
24 decision that there there is a possibility in
25 site-specific locations that some of the supply will go

1 to the remote communities, depending on the location of
2 the supply. That was what we understood.

3 MS. OMATSU: Well, speaking specifically
4 perhaps of the Little Jackfish area, people who are in
5 NAPA, I am not, frankly, sure if they are covered by
6 the remotes or not. But does that mean that, for
7 supply purposes we would talk about the Little
8 Jackfish, but for demand purposes, their concerns, what
9 have you, would not be covered or not subject?

10 MS. PATTERSON: Part of the answer would
11 be whether it's so site-specific that it wouldn't come
12 into this hearing.

13 THE CHAIRMAN: Ms. Marlatt?

14 MS. MARLATT: Constance Marlatt, on
15 behalf of NSTC, UCCM and UOI.

16 Primarily, what I would like to point out
17 today is the fact that we will be relying very much on
18 NAN's questions in cross-examination in this area, as
19 our interests overlap, and that the questions that you
20 heard Nancy Kleer list to you are also questions that
21 we have concerns with. We will, of course, work that
22 out with Ms. Kleer and her clients as to the order of
23 questions and whether or not it is necessary at all for
24 us to cross-examine in those areas.

25 I would also like to point out that

1 question 1 of the statement of concerns, as issued by
2 NAN et al, is certainly a question that we will have
3 interests in, although we do not have the extent of the
4 number of remote communities that Ms. Kleer's clients
5 have, we do have some, and therefore to the extent that
6 we do and to the extent that they are not covered for
7 any reasons under those cross-examinations, we will be
8 covering them. And we are very much in support of the
9 list of questions for cross-examination that was
10 introduced.

11 MR. GREENSPOON: We didn't take part in
12 the motion, but to the extent that some of our clients
13 are interested in the remote communities, I think that
14 we support the issues raised by NAN, and think that
15 those issues should be covered in cross-examination.
16 For example, the ramifications both on supply and
17 demand of the Little Jackfish with respect to the
18 isolated community of Armstrong and their position on
19 the Little Jackfish, I think may be relevant.

20 MR. B. CAMPBELL: Mr. Chairman, not
21 having heard the list of issues until it was, for
22 obvious reasons, spoken to by Ms. Kleer this morning,
23 and not having had an opportunity to compare them in
24 any detail with the rationale for the Board's ruling, I
25 am not sure how much I can usefully say today. I had

1 understood, though, although I was not here when the
2 matter was argued, that, for instance, the reasons for
3 why the remotes are not planned for, as part of the
4 demand/supply plan and the bulk power system, were a
5 matter that was squarely dealt with in the argument of
6 that motion, and as I read it, are recognized in the
7 ruling that the Board has made.

8 In terms of the second issue: Does
9 Ontario Hydro fail to meet the needs of the remote
10 community? Again, in my submission, that's a planning
11 issue which, according to the rationale of the decision
12 that you have made with respect to those
13 interrogatories, recognizing that this application does
14 not deal with the planning for those communities, I am
15 not clear as to how that issue would be dealt with.
16 The technical questions of how the remotes are or are
17 not considered in the actual load forecast, as opposed
18 to the planning, I don't think I would take any
19 objection to some exploration of that on
20 cross-examination. But I think I do find myself in the
21 position that, in this area, it is going to be a matter
22 of having to deal with some of these things as they
23 arise in cross-examination. It's not possible to be
24 perfectly precise in all of them.

25 With that said, counsel for OMAA and OPMA

1 indicated that Hydro has indicated that there would be
2 some information on these kinds of consumer demands, I
3 think were her words, and she was referring
4 particularly to, I believe it was OMAA, the last bullet
5 on issue 1. I think what I have said on these matters
6 is that, for on-grid customers, that is people that are
7 served from the bulk electricity system, it would be
8 relevant to ask questions of our load-forecasting
9 panel, as to how those loads are dealt with in the
10 load-forecasting process and in the load forecast which
11 results from that process. I don't want to be taken,
12 though, as promising that there is a considerable level
13 of detail available at that kind of individual customer
14 level, or that there will not come a point in
15 questioning about that, where we may well wish to take
16 the position that the cross-examination is going to be
17 on matters that are really material to the kind of
18 application and decisions that the Board has been asked
19 to make in that application.

20 I believe those kinds of questions,
21 however, can only be argued in the context of the
22 specific cross-examination. And I have advised counsel
23 for OMAA in this regard, and we have just agreed that,
24 yes, we understand that those kind of disputes might
25 arise. I just thought that I better clarify,

1 precisely, the kind of position we were taking for
2 those on-grid matters.

3 THE CHAIRMAN: Do I understand for you to
4 be saying that, for the moment, speaking in general
5 terms, that you have no objections to these kinds of
6 questions being asked in general terms, but it may be a
7 question of the extent to which some of these matters
8 are gone into; is that what you are saying?

9 MR. B. CAMPBELL: Yes. And I don't want
10 to be taken as having promised that the panel is
11 prepared to deal with this in any significant detail.

12 These are very -- if the question arises
13 as to a very particular load in a very particular area
14 and a very particular income level and so on, I don't
15 want to be taken as having said that our people, that
16 are going to be on the stand, are going to be familiar
17 with that level of detail of information about everyone
18 in Ontario that Hydro serves from the grid; they will
19 not be. But they will be familiar with how that type
20 of information is dealt with or not, in the load
21 forecasting process.

22 As I say, I think as to the issues that
23 Ms. Kleer raised, I think I addressed those separately.
24 My comments are really to the OMAA and OPMA
25 submissions.

1 ---Off the record discussion.

2 THE CHAIRMAN: Our decision that came out
3 yesterday I think on the NAN interrogatory to Panel 2
4 is probably of fairly wide significance. And the
5 parties, I think in fairness, haven't perhaps had the
6 full opportunity to consider it and all its
7 implications.

8 As I hear the argument this morning on
9 this particular issue, the extent to which the matters
10 that Ms. Kleer and others will want to put into the
11 Panel 1 interrogatories, it seems that Hydro's
12 position, which I would agree with, is that those
13 questions of a general nature can be addressed. It
14 will become an issue, perhaps, as to the extent to
15 which some of the matters can be pursued. I think at
16 the moment we can't do anything much more than that.

17 MR. HARPUR: Mr. Chairman, we had a brief
18 discussion in our previous meeting concerning the need
19 for the parties to attempt to order the
20 cross-examination, so as to provide an indication in
21 advance of the first cross-examinations who will be
22 proceeding and in what order, and how long they will
23 take. And the discussion of the length of
24 cross-examinations, the requirement of an estimate had
25 the effect of raising some eyebrows. I believe that

1 some counsel would like to address that.

2 THE CHAIRMAN: We set out something about
3 this some time ago, did we not? We received one reply
4 from the Coalition, other than that there was no other;
5 is that correct?

6 MR. HARPUR: I think that is.

7 THE CHAIRMAN: Do counsel wish to make
8 submissions on that?

9 MR. HARPUR: I believe so.

10 Mr. Kelsey, did you wish to address this
11 point?

12 MR. KELSEY: I think when Mr. Harpur was
13 referring to raised eyebrows, he was referring to mine.

14 I guess it was just an instinctive
15 alerting to a suggestion of limitation of time of
16 cross-examination, because I know the difficulty of
17 predicting the length of time. And I just wondered how
18 strict the Panel intended to be in that regard.

19 I did say to Mr. Harpur that there may
20 also be a jurisdictional question in limiting,
21 certainly unofficially, in terms of time, and as long
22 as we are being to the point and adhering to your other
23 rules, if our prediction of time turns out to be
24 erroneous, then we should be allowed to proceed.
25 That's the general concern.

1 I am not raising it as a big thing and I
2 am sure that we will be able to work it out as we go
3 along. I just wanted to be reassured that if I say I
4 think I am going to be about an hour, and things come
5 out during the evidence, and I strike unexpected gold a
6 couple of times, that it is going to take longer, then
7 I would expect to be able to go on for an hour and a
8 half, as long as I am being to the point and helpful.

9 THE CHAIRMAN: I think we all know that
10 predictions as to how long anything is going to take
11 are notoriously inaccurate. Also, that it is not
12 completely in control of the predictor, because you
13 don't know what kind of responses you will get, how
14 responsive a witness may be, you don't know the extent
15 to which the Panel may intervene. We take all that
16 into consideration, I think.

17 But on the other hand, I think we have to
18 be very, very alive to the time constraints that this
19 process is under, because if there is one thing that
20 seems to be not only within the process but without it,
21 that these types of public interest processes, in order
22 to be effective and useful, must be completed within a
23 reasonable time. I have no reason to think that that
24 won't happen, but I think it is of great assistance to
25 everybody to planning the witnesses, to have some

1 guidelines as to how long things are going to take.

2 And we have to, I think, try to do that.

3 MR. KELSEY: Yes, I am reassured. In
4 other words, guidelines with some flexibility, if
5 necessary.

6 THE CHAIRMAN: What we are going to ask
7 people to do is briefly outline what they intend to
8 cover and how long it is going to take them. We may
9 say, in some cases, well, that seems too long, or we
10 may not; we will have to see.

11 DR. CONNELL: If I may just put a
12 question to you, using again the metaphor of the mining
13 exploration. If striking gold is likely to be the
14 principal reason for an extension in time, can I assume
15 that we are not likely to hear a case from counsel that
16 if they fail to strike gold, the ore body must be
17 deeper and they need another hour. If we get the
18 argument both ways, it may be a very long hearing.
19 (Laughter)

20 MR. POCH: We have known reserves
21 already.

22 MR. KELSEY: I recognize there has to be
23 a limit to the digging, yes, certainly. I am
24 reassured. Thank you.

25 MR. SHEPHERD: Mr. Chairman, perhaps Mr.

1 Harpur intended to deal with this separately, I am not
2 sure, but it seems to be the same issue.

3 I understood that immediately after the
4 direct is complete, you will be asking all counsel to
5 provide a statement of what they propose to
6 cross-examine on and how much time they will take. In
7 fact, it's my understanding that direct will finish and
8 we will start popping up and giving our estimates.

9 It concerned me a little bit that,
10 immediately after the direct, having not talked to my
11 experts yet, I may not be ready to give you a detailed
12 analysis of what I am going to be cross-examining on or
13 a particularly useful estimate, whereas the next
14 morning after I have had talked to them, I probably
15 will.

16 THE CHAIRMAN: I had not really thought
17 of it being quite that way. One thing, I think we have
18 to try and predict in advance is what will be the order
19 of the questioning by the intervenors following the
20 presentation in-chief. That we have to try and predict
21 before the direct is completed.

22 I wouldn't have thought that we would
23 then ask everybody, because I don't think that the
24 fifth person who is going to be cross-examining, to
25 take an example, is going to know what he has until he

1 has heard what has come out from the previous. But I
2 think when you get up on your feet, ready to go, you
3 should have some idea of what it is you want to ask
4 questions about, and how long you think it's going to
5 take, given reasonable responsiveness on the part of a
6 witness, and minimum intervention on the part of the
7 Panel.

8 This is not quite like a civil case where
9 you are worried about credibility or the truthfulness
10 of the witness. You are really dealing with opinions
11 and knowledge that these people have. So in most cases
12 I don't think that would be the case.

13 MR. SHEPHERD: So when it's your turn,
14 you should know by then.

15 THE CHAIRMAN: You should know by then.
16 If you don't, you are in trouble.

17 MR. SHEPHERD: Sounds fair to me.

18 MS. PATTERSON: I also think, though, you
19 should know before the end of the examination, since
20 the examination is going to be relatively short. If
21 you were near the beginning of the cross-examination
22 list, I think you should have a pretty good idea of
23 what you are going to be cross-examining on and how
24 long it's going to take.

25 MR. SHEPHERD: We are, I think, all

1 jockeying not to be near the beginning of the
2 cross-examination list for that reason.

3 THE CHAIRMAN: Well, it is a two-edged
4 thing, because then you have got the danger you mustn't
5 cover grounds already covered. So it works both ways.

6 MR. B. CAMPBELL: I sort of understood
7 that there would be, at least, some preliminary
8 estimate given, I would have thought, prior to the
9 commencement of the panel in-chief, with certain
10 understanding that, until you are sort of fifth up to
11 bat, you might well give a revised estimate. It
12 certainly would be useful from our planning point of
13 view, particularly getting ready with respect to the
14 next panel, matters like that, as early as possible, we
15 could have an overall kind of rough cut, to which I
16 would not be -- I am not going to stand up and say, you
17 have got to be held to it, but an overall rough cut,
18 purely for planning purposes, because we do have a
19 sequence that we have got to follow here. And it
20 certainly would be useful to us; I would certainly
21 appreciate just that kind of overall rough cut.

22 THE CHAIRMAN: I think that's all part of
23 the cooperative process of order of cross-examination
24 and matters, I am certainly sure. But you also have
25 got to recognize it's very difficult before a word of

1 evidence is given by a panel to know what the extent of
2 cross-examination is going to be necessary.

3 It may turn out in some cases that what
4 we expected to be a lengthy cross-examination may turn
5 out to be not so long and vice versa. It's hard to
6 tell, isn't it.

7 MR. B. CAMPBELL: I guess all I would ask
8 is that when the Board is advised of the order that the
9 parties cross-examining intend to -- the order in which
10 they intend to cross-examine, if there could be this
11 kind of rough cut look at it, that would certainly help
12 us from a planning point of view. I don't care really
13 if it only goes to us.

14 THE CHAIRMAN: Isn't that something for
15 the parties to try and work out among themselves,
16 rather than have us intervene in that?

17 MS. PATTERSON: Oh boy. Speaking for
18 myself, I would sort of like to know because if the
19 estimate for the cross-examination of Panel 1 is a
20 year, then we might have to do some restructuring.

21 MR. RODGER: Mark Rodger for AMPCO.

22 Perhaps this is an appropriate time for
23 me to raise a point. I have been talking with a few of
24 my friends about the possible order for the
25 cross-examination, and while I don't think we are in a

1 position today to finalize that, there will be a number
2 of us meeting after we adjourn today, and for any of
3 the other counsel here that would also like to stay
4 behind, at least to commence the dialogue on it, we
5 will be meeting in this room after we adjourn.

6 MR. GREENSPOON: I would like to speak to
7 that just briefly. Our position on this issue, I
8 think, is that these rules of order are set out in Rule
9 48 of the Rules of Procedure, and that, unless there is
10 a very persuasive reason, I would submit there is no --

11 THE CHAIRMAN: Remind me about Rule 48.

12 MR. GREENSPOON: Rule 48 says the order
13 of cross-examination: (1) is the Applicant; (2) are
14 those parties represented by counsel in support of the
15 proposal; (3) those parties not represented by counsel
16 in support of the proposal; (4) those parties
17 represented by counsel opposing the proposal, and then
18 it goes on. (5) those not represented opposing; (6)
19 those parties, such as regulatory bodies that do not
20 take a position; (7) the Board's counsel, and (8) the
21 Applicant in re-examination.

22 THE CHAIRMAN: I think that, generally
23 speaking, is what we would think would happen.

24 MR. GREENSPOON: Yes.

25 THE CHAIRMAN: That would be followed.

1 MR. GREENSPOON: And it's whether you
2 support the proposal.

3 THE CHAIRMAN: Somebody trying to
4 identify which hole they fall into, they may not all
5 fall into it on the same issue, and so I think that's
6 the difficulty.

7 MR. GREENSPOON: I think that is what I
8 am addressing. It isn't whether they fall into it on
9 each issue. The rules speak about supporting the
10 proposal.

11 I think I would have no problem at this
12 point in saying it's clear that my friend, Mr. Rodger,
13 his clients are in support of the proposal.

14 THE CHAIRMAN: But not a hundred per
15 cent, perhaps; I don't know.

16 MR. GREENSPOON: No. And clearly
17 Northwatch is opposed to the proposal, if we had to
18 choose.

19 THE CHAIRMAN: But there may be some
20 things that Northwatch does agree with, I mean I don't
21 know. I am not suggesting that. There may be.

22 MR. GREENSPOON: There may be.

23 (Laughter)

24 MR. WATSON: Reg Watson for MEA.

25 I would just like to follow up on that

1 point.

2 Certainly, as you indicated, we are not
3 in a position right now to tell you whether we are
4 going to oppose or support the proposal. As the MEA
5 has indicated all along, we are trying to take an
6 approach where we are monitoring this hearing
7 throughout, and trying to provide the best proposal
8 possible and the best assistance we can to this Panel.

9 We simply can't tell you whether we are
10 going to support or oppose the proposal today.

11 Thank you.

12 THE CHAIRMAN: There may be a number of
13 parties in that category.

14 MR. RODGER: I would like to follow up as
15 well.

16 Perhaps another alternative to my
17 friend's comments, I don't think, as I think the Board
18 has indicated, I don't think this is a case where there
19 are supporters. There might be clear opponents, but
20 it's not a case where we can divide it up like that.

21 If the Board wants to try and avoid
22 repetition on cross-examination, then I suggest that
23 perhaps another approach would be, if you picture an
24 inverse pyramid, and you start by -- after Hydro's puts
25 in its case with respect to Panel 1, the

1 cross-examiners who would start would be the ones who
2 were dealing with the broadest issues, and from there
3 work down to more and more narrow issues, and that may
4 not necessarily follow the support or opposed set of
5 views. If you want to start off with the broadest end
6 of the funnel first, and then work your way down to a
7 point, then that way you are going to avoid a lot of
8 repetition.

9 MS. PATTERSON: I assume that this is all
10 cross-examination, that a lot of it will be in support
11 of Hydro, in some cases. I don't think it is
12 appropriate for a party that is really in support of
13 Hydro to be coming in at the end, just because their
14 examination might be more detailed.

15 MR. RODGER: I agree with you. I just
16 think that, for this type of case, it's very difficult
17 to make these clear lines of support, opposed or
18 supposedly neutral, and perhaps a more 'broader to a
19 narrower' order might helpful; it might avoid
20 repetition.

21 DR. FRANKLIN: I feel very strongly that
22 it might be helpful to the Board to follow the Act in
23 terms of the order of witnesses, because the Board has
24 followed the Act in terms of orders of presentation.

25 Ontario Hydro gives its case, the

1 intervenors cannot call witnesses on a particular issue
2 raised. When we cross-examine, we cannot at the same
3 time bring in witnesses. We can only cross-examine on
4 the statements of those of Ontario Hydro at this point.

5 I don't think we can then turn that
6 process that you have installed on the basis of the Act
7 around when we come to cross-examining, because there
8 we do the sort of scoping that some of us had hoped we
9 would do at the hearing as a whole, that we would be
10 begin with certain issues and everybody would speak to
11 it, including bringing in the expert witnesses. But if
12 Jay has to go back to his witness in order to
13 cross-examine, he cannot bring them in to give
14 evidence, then I think, in all due respect, you use two
15 criteria: One for presenting evidence and one for
16 cross-examination. And I would hope that any
17 cross-examination as in presentation, those who support
18 the undertaking and those who oppose it are clearly,
19 for Board's sake, identified.

20 MR. KELSEY: I think it is a difficult
21 question and AMPCO, for example, could say, well, we
22 are not supporting Hydro completely, but I think it may
23 be necessary to make some determination of the people
24 who are broadly in the same economical or energy
25 interest overall as Hydro. And one way of doing that,

1 of course, is looking at the statement of concerns. I
2 have just looked at the statement of concerns of AMPCO
3 and they are essentially, although taking issue, they
4 are essentially within the same ballpark as Hydro. And
5 their questions are directed towards fine-tuning and
6 particular models of forecasting, whereas the what I
7 might call the public interest groups, take issue with
8 fundamentals.

9 I certainly think it would be
10 undesirable, for example, for AMPCO to follow in any
11 respect the public interests groups, because certainly
12 if there is an unrestricted right in everyone but the
13 proponent to cross-examine, because the normal rule of
14 course, and in cases that if one party is in
15 substantially the same interest, he or she or it is not
16 allowed to cross-examine, in order to elicit further
17 evidence. This is the reason I think --

18 THE CHAIRMAN: Well, cross-examine may
19 not be an entirely appropriate word in a process like
20 this. "Questioning" is probably more a neutral word.

21 I don't disagree with what people have
22 been saying, that, generally speaking, the way it
23 should be is the scheme as set out in the rules,
24 generally speaking. But again, there may be situations
25 where some variation of that might be appropriate.

1 MR. KELSEY: The problem, I think, may be
2 in people's perception or some parties' perception of
3 whether they are or are not in support. I think that's
4 really where the issue might well come.

5 THE CHAIRMAN: But certainly the extreme
6 case should not be that the people who are opposed to
7 what was being said by a Panel are then being followed
8 by people who, in effect, really try to rehabilitate
9 the witness. I mean, that shouldn't happen and that's
10 not the way the process ought to work. But again, I
11 think maybe all these problems will tend to sort
12 themselves out when we get to the specific cases.

13 MR. KELSEY: Probably, yes. Thank you.

14 MR. HARPUR: Mr. Chairman, Florence
15 Mackesy would like to address the Panel on a couple of
16 points. One of them has to do with the nature of the
17 procedures generally and whether they are designed in
18 such a fashion that members of the public are
19 adequately able to participate in a scoping session
20 such as this one. And the other one has to do
21 specifically with the implications of the issues list,
22 and whether one is taken to agree with things that
23 don't specifically appear on it. I will let Mrs.
24 Mackesy address you on that.

25 MRS. MACKESY: Thank you.

1 With regard to the first matter, I am
2 concerned that members of the general public, whether
3 they are participants or parties, would have their
4 issues refused in submissions or at satellite hearings
5 just because those issues weren't on a particular
6 issues list. They might have matters that they
7 consider relevant that none of the parties put on the
8 issues list. And I wonder whether they would be
9 allowed to...

10 MS. PATTERSON: You are talking about
11 members of the public who come to sessions?

12 MRS. MACKESY: Or to make written
13 submissions, whether they are listed as participants or
14 whether they are perhaps part-time parties.

15 THE CHAIRMAN: Well, part-time parties
16 have the ability to put in concerns, to question
17 witnesses, to call their own evidence, and so on.

18 MRS. MACKESY: May I speak to a point on
19 that?

20 I was speaking to an acquaintance who has
21 been involved in other hearings in which I have been
22 involved, and she changed her status from participant
23 to part-time party with this hearing and I am not sure
24 why. I didn't ask. But I was speaking to her at
25 Christmas and she said she was so overwhelmed with the

1 amount of paper she was getting, that she just felt she
2 couldn't cope with it. I don't know whether she
3 changed her status or not, and I haven't talked to her,
4 I don't know what her position is as to how much she
5 intends to work with the hearing. But I am concerned
6 that someone like that would not be able to put her
7 remarks before the Board.

8 Would she have to change her status back
9 to participant, is that how you -- in order to get her
10 remarks before the Board?

11 THE CHAIRMAN: Participants are going to
12 be allowed to put their input in writing or may be give
13 it orally. They will be able to follow the rest of the
14 evidence.

15 MRS. MACKESY: Are they going to have to
16 respond at each panel or can they do that in one
17 general --

18 THE CHAIRMAN: No, we haven't really
19 worked out precisely how it is going to be done, but
20 their input will be received either in written form or
21 oral form or both.

22 MRS. MACKESY: They will not be bound by
23 the limits of these issues, statements on a particular
24 panel topic?

25 THE CHAIRMAN: They will probably be

1 bound by some kind of time constraint.

2 MRS. MACKESY: Yes. But as far as the
3 issues, they won't be bound by it.

4 THE CHAIRMAN: I wouldn't think so.

5 MRS. MACKESY: All right. Okay, that is
6 what I was concerned about.

7 THE CHAIRMAN: I don't know if I
8 understand what your concern is. I am not quite sure I
9 do.

10 There is a part of this hearing for those
11 people who are not participants. What we have not
12 guaranteed is that they will all be allowed to get up
13 and speak. We may require some of them to put their
14 submissions in writing.

15 MRS. MACKESY: Oh, I don't know whether
16 they are aware of that.

17 THE CHAIRMAN: I think it is in the
18 procedures sheet if you look at them.

19 MRS. MACKESY: Yes.

20 THE CHAIRMAN: We have over 100 of them
21 at the present time, and we want to at least have some
22 idea of what their position is by written submissions.
23 And then we will decide whether we need to hear
24 anything further from them or whether the written
25 submissions are satisfactory to get their points of

1 view before the Panel.

2 MRS. MACKESY: Has that gone out to each
3 of the participants?

4 THE CHAIRMAN: Yes, it has gone out.

5 MRS. MACKESY: I'm sorry, I wasn't aware
6 of that.

7 The second point, with regard to the
8 concept of the issues list, I am in agreement with that
9 as a way to efficiently schedule the issues that have
10 been brought before the Board or questioned by the
11 parties in the statements of concern, but I would state
12 that I am concerned. I wouldn't want this to be taken
13 as necessarily indicating agreement with Ontario
14 Hydro's position on any issue that are not on the list.
15 Would that apply?

16 MS. PATTERSON: Well, I guess we view
17 this list of concerns as something that identifies to
18 us what the major issues will be and what is contested
19 in Hydro's plan.

20 MRS. MACKESY: In my particular case, I
21 have addressed only a few matters and that doesn't mean
22 that I am in agreement with either issues on or off the
23 list, or on documentary evidence that's presented, but
24 only that these are some areas that I want to know more
25 about and that I feel I can cope with.

1 MS. PATTERSON: You have just choosen
2 specific issues to deal with?

3 MRS. MACKESY: That I feel I can manage,
4 yes, and I don't want it to be taken as in agreement
5 with others that aren't on the list or are on the list
6 that are at some point said to be pertinent to this
7 overall hearing.

8 MS. PATTERSON: So are you saying you
9 would like to bring issues later or you just don't want
10 to be seen to be agreeing?

11 MRS. MACKESY: I don't want to seem to be
12 in agreement; that's right. I think the matter of
13 bringing other issues later has been covered in the
14 previous discussion here.

15 MS. PATTERSON: I don't think you would
16 be seen to be agreeing with other things.

17 MRS. MACKESY: Thank you, Ms. Patterson.

18 MR. HARPUR: I know that Nancy Kleer
19 wanted to speak to the matter of Notices of Motion and
20 their distribution, particularly in connection with the
21 recent NAN Treaty No. 3 motion on interrogatories and
22 the implications of the decision for people who
23 apparently did not receive a copy of the Notice of
24 Motion.

25 MS. MORRISON: It was sent out with our

1 general mailing.

2 MR. HARPUR: That was my impression, but
3 I gather there is a query about it.

4 MS. KLEER: I speak more at this point on
5 behalf the others who didn't receive the Notice of
6 Motion.

7 My experience has been, I received
8 subsequent Notices of Motions, but any Notices of
9 Motions dealing with interrogatory have not been
10 distributed, except other than the person who raised
11 the motion sends it to Ontario Hydro as well as to the
12 Board. I am not certain that that's the practice, but
13 I know my friend Constance Marlatt did not receive the
14 Notice of Motion.

15 MS. MORRISON: A correction: The
16 interrogatory motions are notified in our letters.
17 That if it says, interrogatory motions will be brought
18 by the following parties on the date for
19 interrogatories. But we don't send out separate
20 Notices of Motion, because our procedures don't require
21 Notices of Motion in interrogatory matters, in fact.

22 MS. KLEER: I think that does raise an
23 issue, though, because there are clearly situations in
24 which other parties will be interested, such as the one
25 that we are dealing with in Panel 2.

1 I am not sure, but I don't think the onus
2 should be upon the party who is filing the motion to
3 identify all of the parties who might want to address
4 that motion in either support or against it. Perhaps
5 the solution would be to, simply, after distributing
6 the Notice of Motion, giving the list of interrogatory
7 questions that are going to be addressed. At any rate,
8 at least give some sort of notice of the list of
9 interrogatories that are that are going to be addressed
10 at the motion, because, clearly, there will be some
11 parties who are interested in the motion and they won't
12 know by reading the letter.

13 THE CHAIRMAN: Thank you, Ms. Kleer.

14 MS. MARLATT: I would like to speak on
15 that particular issue just for a moment.

16 In the case that you have before you of
17 this motion, had I been aware of precisely the nature
18 of the arguments, but even more importantly the extent
19 that the decision would affect our intervention, I
20 would certainly have been at this motion and I would
21 have had arguments for it, points to be raised.

22 So I would ask that that particular issue
23 be looked at again. I would like to take these rulings
24 back, for the only reason on this particular motion and
25 review them carefully with my clients because they do

1 affect our intervention, also.

2 MR. HARPUR: I believe there is just one
3 last agenda item, at least from my perspective, and
4 that has to do with the prefiling of documents and the
5 extent to which reference must be made to documents in
6 the course of direct evidence. It's an issue which I
7 know Mr. Campbell would like to address.

8 MR. B. CAMPBELL: This matter arose in
9 our meeting with counsel which we organized earlier
10 this week, in which Mr. Harpur raised some concern
11 about our view as to the degree to which we could rely
12 on the prefiling of documents. Given the instructions
13 that we have received from the Panel through Ms.
14 Morrison, as to the presentation of evidence-in-chief,
15 we have, let me just summarize, then, by saying that we
16 were advised that the Panel's view was that parties
17 would have a realistic opportunity for their witnesses
18 to present summary information, that as the Panel has
19 already had an opportunity to review the plan, it is
20 unnecessary to have evidence contained in it repeated
21 in detail, and we have taken that to apply to the main
22 documents filed in support for each particular panel as
23 well.

24 On that basis, we provided an overall
25 estimate for the presentation of our case and, indeed,

1 allocated time from that overall estimate for Panel 1.
2 For instance, the Board indicated that the following
3 time frames appeared to be reasonable or to be adequate
4 for the presentation of the first three witness panels,
5 and times were assigned, and in the witness Panel 1,
6 it's three to five hours and we have been preparing on
7 that basis.

8 Now, in sending out the memorandum with
9 the issues list, I wanted to be absolutely clear on
10 this point. I raised it more in the context of what is
11 happening in some other Environmental Assessment Board
12 proceedings. There have been cases where the Panel
13 explicitly stated that, even if there was no dispute
14 amongst the parties on a matter, they wanted to hear
15 viva voce evidence on that matter, and there has been
16 greater or lessor reliance on prefileds, depending on
17 the views of that particular panel in that particular
18 case.

19 We have understood from the instructions
20 we received from the Panel in November that, in the
21 approach to this case generally, we could rely on the
22 Board's having carefully reviewed the prefiled
23 documentation. Our impression, certainly overall of
24 the motions we have been arguing, is that that has been
25 taking place, and that Ontario Hydro witnesses need not

1 address each and every pertinent matter covered by that
2 documentation in detail. In fact, we would be giving
3 an overview of the main conclusions which we say could
4 be drawn from those documents.

5 As a corollary to that, I will tell you
6 that we are assuming that if, as we proceed through our
7 direct testimony, or indeed in the course of
8 cross-examination, if the Panel feels it's sort of
9 losing a grip on the context of the questioning, and
10 would like a little more explanation of a particular
11 matter, we are expecting that the Panel will ask those
12 questions at that time, because, in my judgment,
13 anyway, it's always a little harder to catch up once
14 you have gotten behind than to make sure you keep up as
15 you go along.

16 Now, those assumptions are absolutely
17 critical to the preparation time that we have spent,
18 such of it that has been available when we haven't been
19 answering interrogatories anyway, with respect to Panel
20 1 and subsequent panels.

21 Mr. Harpur, not to put too fine a point
22 on it, took a view of this that concerns me greatly,
23 and it may be that I have just been giving too much
24 emphasis to his views on the matter. And if I can,
25 fairly or unfairly, summarize my concern, it is that

1 the message we got earlier this week was that we really
2 had to spend time taking the Panel through a document
3 in a much more detailed way than we had ever expected
4 to, if in fact we were going to place any reliance on
5 it at the end of the day. Obviously, a clear
6 understanding of this is absolutely essential to our
7 presentation of our case in-chief. And I will tell you
8 that the assumptions that I started with are the only
9 assumptions on which we would be capable of meeting the
10 three to five hours of designation that the Panel view
11 has assigned to us for this Panel 1.

12 So I raise that concern, and I would like
13 a clear understanding from the Panel in that regard,
14 because it is so critical to the presentation of our
15 evidence-in-chief.

16 THE CHAIRMAN: Let me be specific. Panel
17 1, there is, first of all, a one-and-a-half page list
18 of documents which are going to be relied upon by all
19 panels, and then in Panel 1 itself, there is a half
20 page list of documents.

21 Now, I don't think that the Panel will
22 come to this meeting able to take a written examination
23 on what the contents of all those documents are. We
24 take it that these documents are part of the evidence
25 and part of Hydro's case, but if there are any

1 particular aspects of those documents that you want to
2 draw our attention to, I think you have to do that.

3 MR. B. CAMPBELL: We have taken it that
4 the Panel will have gone through with some care, in
5 particular the specific exhibits that are listed
6 against each panel. That is, for Panel 1, the load
7 forecast report, and, of course, now there is a 1990
8 forecast and a 1990 economic outlook. To the extent
9 that later versions of these have been filed, our
10 emphasis is obviously going to be on the later
11 versions. And the load forecast report which is listed
12 there first is perhaps an obvious example of that,
13 where there is now a 1990 load forecast, and as I said
14 in my memorandum, our emphasis will be on the later
15 documents. This list has been supplemented somewhat
16 for specific documents for Panel 1.

17 But we are, as we were advised in the
18 letters, assuming that the Panel has had an opportunity
19 to review those documents and has taken that
20 opportunity. And we will, of course, in particular
21 with the main set of documents for the Panel, obviously
22 be drawing from those for our evidence-in-chief, and,
23 in a sense, we have to prove the documents, in any
24 event.

25 But the only way we can hope to meet

1 three to five hours is to accept at face value the
2 assurance which we were given, which is that the Panel
3 has taken the opportunity to review those principal
4 documents.

5 THE CHAIRMAN: Well, you know, Mr.
6 Campbell, the way that it happens. In Divisional
7 Court, for example, I don't know how these particular
8 documents stand, but they probably stand about that
9 high. I can tell you, speaking for myself, that I
10 wouldn't be able to give a dissertation on the Monte
11 Carlo simulation, for example; I just wouldn't be able
12 to do that. So if that's important to your Panel 1,
13 then I think you would have to direct me to that.

14 MR. B. CAMPBELL: I think directing you
15 to it as important is a completely different thing from
16 taking you through it, then, in detail; and that is
17 what I am concerned about.

18 THE CHAIRMAN: No, that's what I don't
19 want to happen. That's unnecessary. - But I do think
20 you have to tell us where it fits into the mosaic and
21 what parts of it should be emphasized.

22 MR. B. CAMPBELL: Obviously, it is our
23 responsibility to make sure that the things that we say
24 are most important for you to accept, in order to
25 accept the conclusion that we urge upon you, is

1 carefully drawn to your attention, and we will do that.
2 But what we do hope is that we don't have to go through
3 each and every explanation in detail. And I think you
4 have answered me on that, and to some extent, we will
5 have to deal with this as we go along.

6 But I want to emphasize again, the
7 corollary to our ability to do this in this time is
8 familiarity, generally, with the documents, and is an
9 expectation that, if the Panel, in the course of our
10 examination-in-chief is not following, or what about
11 this, or what about that, a question comes to mind, we
12 are asking and urging the Board that it has an
13 obligation to do that, if we are going to compress
14 ourselves down to that kind of time frame.

15 DR. CONNELL: Perhaps I could make a
16 suggestion that I think might be helpful. That is
17 referring now only to the documents cited, but not
18 specific to Panel 1. And that really is -- as your
19 case gets clearly set in your minds, if you could draw
20 our attention to sections of those documents of fresh
21 rereading, it would be helpful.

22 MR. B. CAMPBELL: All right.

23 DR. CONNELL: I think we probably have
24 the capacity to reread a couple of hundred of pages of
25 those documents within the final week, kind of thing.

1 MR. B. CAMPBELL: I am quite content to
2 do that, but our emphasis is clearly going to be on the
3 documents that are specific to each panel, as they have
4 been supplemented since the time this list was
5 prepared.

6 I think I have an understanding that is
7 sufficient for my purposes, at least.

8 The other matter, there is one thing
9 that I wanted to be clear on on this issues list. I
10 have talked to a number of the parties about it. There
11 are matters, and I want it clear that this is so, that
12 there are matters that we have said, yes, we see those
13 as being issues, which are not necessarily part of our
14 case. And I should just tell you that in dealing with
15 all of the parties on the issues list, I have made that
16 clear. And our expectation, which seems to be pretty
17 universally agreed to, is that there may well be
18 cross-examination on those matters to elicit admissions
19 that are favourable to that position by other parties,
20 and they may address them in their case, and then we
21 will be in a position that, if we are concerned about
22 the impact of that cross-examination or testimony in
23 total, we will have to deal with them in reply. But we
24 have not attempted to hone down the issues list, simply
25 to matters which we say we will be addressing in our

1 case. And I just wanted to be clear on the kind of
2 basis on which that was proceeding. There doesn't seem
3 to be any argument about that.

4 THE CHAIRMAN: That's point 3 in your
5 memorandum.

6 MR. B. CAMPBELL: Yes. I just wanted to
7 deal with that specifically.

8 The final matter that I wanted to deal
9 with is that I raised again at the meeting with
10 counsel, and I have subsequently with other parties
11 intending to cross-examine, raised the question of
12 witnesses under cross-examination. And I will use this
13 only as an example. We have this problem all the way
14 through the case. We have, and I will just pick one
15 witness from the first Panel, Paul Burke; he is on page
16 4. We are in the midst of answering, as best we can,
17 trying to answer, I think, over 900 interrogatories for
18 Panel 4, which he has significant input into many of
19 those answers; his function has significant input into
20 that. He is also going to be appearing in June as a
21 witness to support the short-term load forecast at the
22 Ontario Energy Board rate review, annual rate review,
23 and that case is being called, at least, on -- the
24 principal counsel calling that case on an ongoing basis
25 would be one of my partners, and Ms. Payne, who is

1 appearing with me today. And it is clear to me that
2 under this set of circumstances, it is not really
3 feasible for us not to have any discussions with Mr.
4 Burke in the course of all of this work that has to be
5 done.

6 I have reviewed this matter with counsel
7 and have, I believe, got the consensus view that that
8 is satisfactory, for us to speak to our witnesses for
9 the purposes of these other matters that they have to
10 deal with, and for them to deal with their staff on
11 these other matters and for the collection of
12 information, but we do give our assurance that there
13 will be no discussions aimed at advising witnesses as
14 to how to deal with matters which are the subject of
15 cross-examination. Subject to any concerns that the
16 Board has in this matter, I believe this is acceptable
17 to counsel to whom I have spoken, which are certainly
18 most of the ones that are here and have dealt with
19 Panel 1. And subject to anything that the Board may
20 say, that is how we plan to proceed.

21 And I did think, however, that it is very
22 important, for some pretty obvious reasons, to be quite
23 explicit about this and ensure that it is on the record
24 of these proceedings, rather than have some question of
25 impropriety arise.

1 THE CHAIRMAN: Any other counsel,
2 parties, have to say anything about that particular
3 matter?

4 ---Off the record discussion.

5 THE CHAIRMAN: I think, based on the
6 assurance that any discussions with someone such as Mr.
7 Burke, if it does not involve his testimony, or his
8 cross-examination of the witness, I think it is the
9 only practical way of dealing with it. We are all
10 agreed on that.

11 MR. B. CAMPBELL: Thank you very much.

12 MR. HARPUR: Mr. Chairman, that completes
13 my list. If I have left anyone's matter off, I
14 apologize for that; I would ask that they bring it
15 forward now.

16 THE CHAIRMAN: Anything else?

17 Yes, Ms. Kleer?

18 MR. B. CAMPBELL: Sorry, just on that
19 matter. Mr. Shepherd raised with me the question, did
20 this just apply to Mr. Burke or does it apply
21 generally. I thought I had made it clear that I had
22 just used Mr. Burke as an example. I have this problem
23 throughout, and we will treat it exactly the same.

24 THE CHAIRMAN: I think that applies to
25 intervenors, as well as to Hydro. In a hearing of this

1 kind, the rule that applies very strictly in civil
2 procedures perhaps can be relaxed, because of the
3 nature of the testimony in this hearing.

4 MR. B. CAMPBELL: Thank you, Mr.
5 Chairman.

6 MS. KLEER: Just one final point. Dr.
7 Connell. You suggested that counsel provide to you a
8 list directing to particular areas that you should
9 review prior to coming to hear the evidence of Ontario
10 Hydro. It would be helpful for myself, and I don't
11 know if it would be helpful for other counsel, to
12 receive the same information, so that we can also
13 direct ourselves in preparing for our cross-examination
14 as to the areas where Ontario Hydro is focusing.

15 MR. B. CAMPBELL: With respect to that,
16 Dr. Connell's list, the list for all panels, yes, we
17 will provide it to all parties.

18 MS. KLEER: I presume then that that list
19 would also include those portions of the exhibits that
20 are to be relied upon by all panels, it would be part
21 of that list?

22 MR. B. CAMPBELL: That's what the list
23 addresses, is what I took from Dr. Connell.

24 THE CHAIRMAN: All the documents of Panel
25 1 are in, and it's only the ones that you want us to

1 look at from the general list.

2 MR. B. CAMPBELL: The question I was
3 asked by Dr. Connell was in relation to that list at
4 the back, which is a long list of documents that we
5 say, these may be relied on to some degree by all
6 panels. But if there are things from that that are
7 going to be specifically addressed by a particular
8 panel, we will draw that to your attention in advance
9 of the testimony.

10 MS. KLEER: I see. I thought he was
11 referring to the documents themselves, the specific
12 documents, not the entire list, but I am clear now.
13 Thank you.

14 MR. KELSEY: I am not quite clear where
15 we stand on Mr. Campbell's proposal on the manner in
16 which he proposes to put in his case. Maybe there is
17 nothing to be concerned about, but I think that we
18 should be entitled, at the end of the presentation of
19 each case on a particular panel, to have a pretty clear
20 idea, generally, of what his case is.

21 THE CHAIRMAN: He would hope to do that,
22 if he can.

23 MR. KELSEY: Pardon?

24 THE CHAIRMAN: I'm not quite sure I see
25 your point.

1 MR. KELSEY: Okay, what I wouldn't want
2 is, for example, for a whole chapter or a part of a
3 document not to be referred to at all, and then find
4 that, at the conclusion of the hearing, it, in fact,
5 formed a substantial part of his argument.

6 THE CHAIRMAN: I think we have to be
7 clear about this. I take it that these documents are
8 part of the evidence in this hearing, and can be used
9 as such, not only by Ontario Hydro, but by other
10 parties as well. The fact that Mr. Burke doesn't refer
11 to a particular document in giving his testimony
12 doesn't mean that Hydro cannot rely on that document
13 when it comes to making his final presentation. That's
14 my understanding. Now, if that's not the general
15 understanding, then...

16 MR. KELSEY: Yes, I can see that side of
17 it. And then the other side of it is it would be
18 helpful for us to know what parts are unimportant and
19 we don't have to deal with them. Because it's
20 combined, as I understand, with the position that Mr.
21 Campbell seemed to advance on Tuesday, that anything
22 that the intervenors don't take issue with specifically
23 is deemed to be admitted. So I am not really sure,
24 there may be parts of documents, now is it going to to
25 be relevant to his case, or isn't it? Do I deal with

1 it, or don't I deal with it? Am I admitting it all?

2 THE CHAIRMAN: That's the question that I
3 understood Mrs. Mackesy to be asking, that just because
4 you don't say anything about it doesn't mean...

5 I think, again, when it comes to making
6 your submissions at the end, it will all fall out. You
7 will say what you agree with and what you don't agree
8 with. But as far as the evidence is concerned, these
9 documents are part of the evidence and can be used as
10 they see fit.

11 MR. KELSEY: Yes.

12 THE CHAIRMAN: I guess it isn't the
13 normal civil rule that silence is deemed to be --
14 withstand admission; unless you have said you have
15 admitted it, you are not --

16 MR. KELSEY: No. This is what that seems
17 to be. It is just, dealing only in terms of
18 cross-examination, if we ignore a whole section of a
19 document, are we deemed to be admitting it, so that at
20 some future time, we can take an issue with it? If Mr.
21 Campbell hasn't referred to it, we haven't referred to
22 it. I mean, is it sort of the lurking there as sort of
23 a trap?

24 THE CHAIRMAN: If you come in in your
25 your argument and say, we don't believe that this

1 particular technique is valid and, of course, this
2 document, and nobody has ever raised that during the
3 hearing, you are going to be in some difficulty making
4 that argument.

5 MR. KELSEY: Yes, on both sides.

6 THE CHAIRMAN: That's right.

7 MR. KELSEY: That's the problem.

8 Would that not apply to Hydro as well?

9 If no reference has been made to that section, it can't
10 then suddenly become a major part of its case.

11 MS. PATTERSON: But on the other hand,
12 though, in terms of reply evidence, if all of these
13 documents go in, and then other parties bring up issues
14 on cross-examination that have been dealt with in the
15 documents, but Hydro hasn't emphasized them, I don't
16 think that gives Hydro the right to bring evidence to
17 emphasize those issues that have already been dealt
18 with as background in reply.

19 MR. KELSEY: Well, they might become more
20 important. I seem to recall that this will all come
21 out in the wash. It's difficult to deal with all these
22 theoretical things, no doubt.

23 THE CHAIRMAN: Mrs. Mackesy has been
24 trying to stand up.

25 MR. B. CAMPBELL: I'm sorry.

1 MRS. MACKESY: Mr. Chairman, you were
2 right in saying that was my concern to this Board, and
3 Mr. Kelsey was saying, it would nice to know what Hydro
4 is relying on.

5 THE CHAIRMAN: I think they are relying
6 on the documents that are there.

7 MR. KELSEY: If they can specify as to
8 what parts that they are relying on. Thank you.

9 MR. B. CAMPBELL: Let me take the 1990
10 load forecast document as an example. We are relying
11 on the entire document. To the extent that there is
12 something in there that we don't touch on in-chief,
13 it's not cross-examined on, nobody raises it in their
14 case, I don't see that Mr. Kelsey should have any
15 problem with that. That's part of our evidence.
16 Nobody has taken issue with it throughout, and,
17 obviously then, in those circumstances, at the end of
18 everybody else's case, we wouldn't be entitled to call
19 any reply; nobody has taken any issue with it; nobody
20 has called any evidence to which we feel we need to
21 respond. And the matter is on the record. And then
22 there is an argument as to weight, but it is surely
23 evidence.

24 THE CHAIRMAN: Anything else?

25 MR. POWER: Just following up on that, in

1 addition to the evidentiary concerns, I am also
2 concerned about wasting resources where we don't
3 necessarily need to. I would rather not have to have
4 the consultants go through a list of 30-odd documents
5 on page 37 of the witness statement, for each and every
6 panel, if it's not necessary.

7 I wanted to follow up with a question of
8 the Panel, about asking Ontario Hydro to supply,
9 approximately a week in advance, references to the
10 documents on page 37 and 38 that Ontario Hydro intends
11 to primarily rely on. I wonder if we can make that
12 reference list of material available to all the
13 intervenors?

14 THE CHAIRMAN: I think counsel intended
15 to do that.

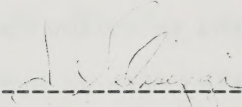
16 MR. POWER: Okay; I wasn't clear on that.

17 MR. B. CAMPBELL: The week we can meet
18 for subsequent panels; at this point there is no hope
19 that we can do it for Panel 1, but we will get it out
20 as soon as we can.

21 THE CHAIRMAN: Anything else? If not, we
22 will adjourn sine die.

23 ---Whereupon the hearing was adjourned sine die at
24 12:55 p.m.

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4 I hereby certify the foregoing to
5 be a true and accurate computerized
6 transcription of the proceedings to
7 the best of my skill and ability.

8 

9 Jo-Anne A. Scisizzi, CSR, RPR
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